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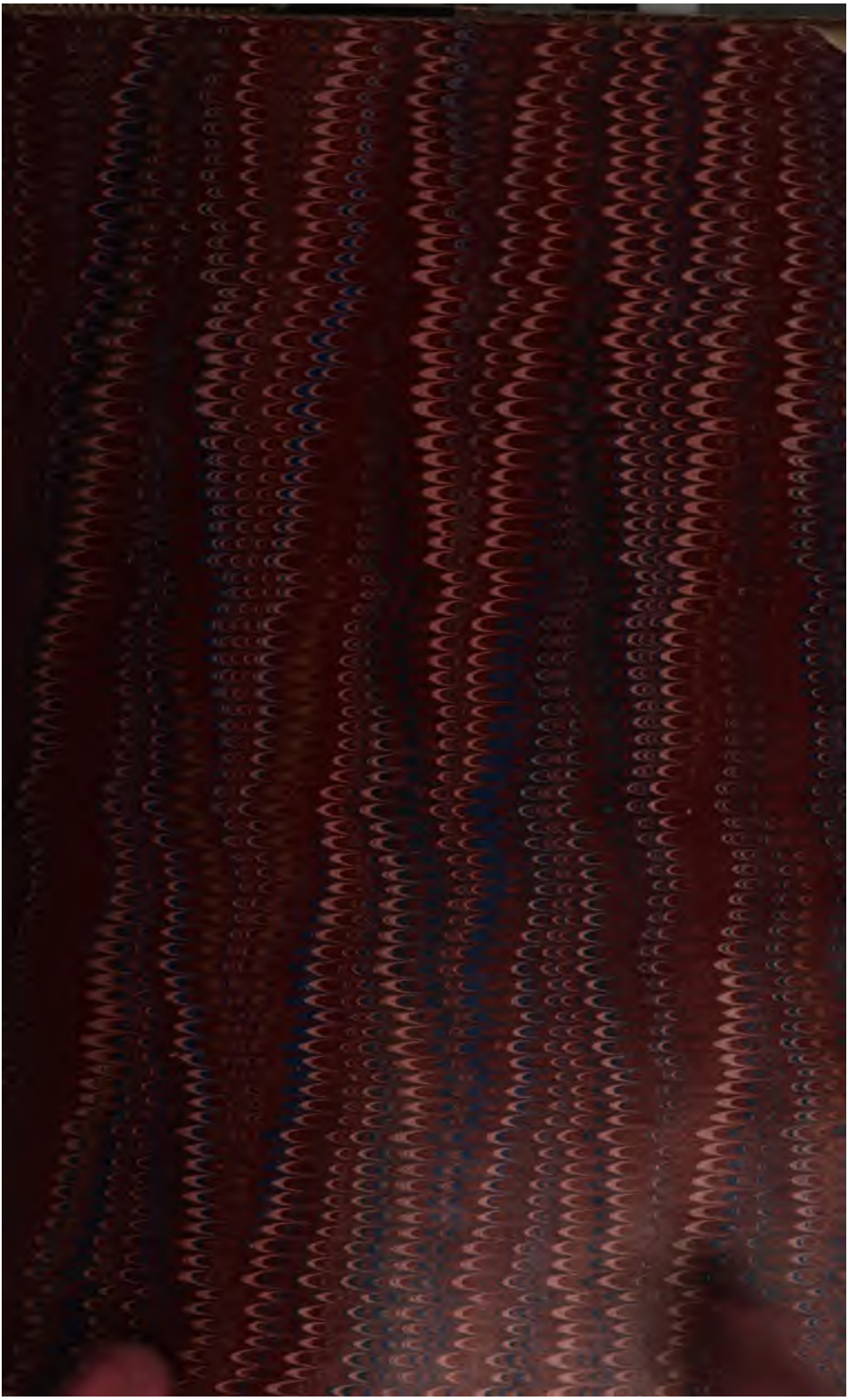

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Regards

W H Painter

PACIFIC RAILROADS IN CONGRESS.
1877 AND 1878.

# PROCEEDINGS

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## OPINION

OF

## UNITED STATES COURT OF CLAIMS

IN

## FIVE PER CENT CASE.

WASHINGTON.
1878.

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# DEBATE

IN

# THE SENATE OF THE UNITED STATES

UPON THE

## BILLS PROVIDING FOR A SINKING FUND TO LIQUIDATE THEIR INDEBTEDNESS TO THE GOVERNMENT.

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The following debate upon the propositions for a sinking-fund to enable the Pacific Railroad to meet their obligations to the Government when due, is compiled from the official reports of the Senate debates:

## IN SENATE.

MARCH 12, 1878.

* * * * * * *

THE PACIFIC RAILROADS.

Mr. THURMAN. I move to postpone all previous orders and proceed to the consideration of Senate bill No. 15.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

The Committee on the Judiciary reported an amendment to strike out all after the enacting clause and to insert as a substitute:

That the net earnings mentioned in said act of 1862, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of 1864, as well as of said act of 1862. This section shall take effect on the 30th day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or of either of said railroad companies existing prior thereto.

SEC. 2. That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States

[illegible]

[illegible]

[illegible]

not operate or be held to impair any existing legal right, except in the manner in this act provided, of any mortgage, lien, or other creditor of any of said companies respectively, nor to excuse any of said companies respectively from the duty of discharging, out of other funds, its debts to any creditor except the United States.

SEC. 9. That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into the Treasury, or into said sinking fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon all the property, estate, rights, and franchises of every description granted or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal, and mixed, assets, and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon.

SEC. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceeding against the said several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceeding already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to.

SEC. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

SEC. 12. That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal, as, in the opinion of Congress, justice or the public welfare may require. And nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in favor of the United States.

SEC. 13. That each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of 1862 and of said act of 1864 respectively, and of both said acts.

Amend the preamble so as to read as follows:

Whereas on the 1st day of July, A. D. 1862, Congress passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes;" and

Whereas afterward, on the 2d day of July, A. D. 1864, Congress passed an act in amendment of said first-mentioned act; and

Whereas the Union Pacific Railroad Company named in said acts, and under the authority thereof, undertook to construct a railway, after the passage thereof, over some part of the line mentioned in said acts; and

Whereas under the authority of the said two acts, the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, undertook to construct a railway, after the passage of said acts, over some part of the line mentioned in said acts; and

Whereas the United States, upon demand of said Central Pacific Railroad Company, have heretofore issued, by way of loan and as provided in said acts, to and for the benefit of said company, in aid of the purposes named in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at 6 per cent. per annum, payable half-yearly, to the amount of $25,885,120, which said bonds have been sold in the market or otherwise disposed of by said company; and

Whereas the said Central Pacific Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas, after the passage of said acts, the Western Pacific Railroad Company, a corporation then existing under the laws of California, did, under the authority of Congress, become the assignee of the rights, duties, and obligations of the said

Central Pacific Railroad Company, as provided in the act of Congress passed on the 3d of March, A. D. 1865, and did, under the authority of the said act and of the acts aforesaid, construct a railroad from the city of San José to the city of Sacramento, in California, and did demand and receive from the United States the sum of $1,970,560 of the bonds of the United States, of the description before mentioned as issued to the Central Pacific Company, and in the same manner and under the provisions of said acts; and upon and in respect of the bonds so issued to both said companies the United States have paid interest to the sum of more than thirteen and a half million dollars, which has not been reimbursed; and

Whereas said Western Pacific Railroad Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States to it, and secured the same by mortgage, which are, if lawfully issued and disposed of, a prior and paramount lien to that of the United States, as stated and secured thereby; and

Whereas said Western Pacific Railroad Company has since become merged in and consolidated with said Central Pacific Railroad Company, under the name of the Central Pacific Railroad Company, whereby the said Central Pacific Railroad Company has become liable to all the burdens, duties, and obligations before resting upon said Western Pacific Railroad Company; and divers other railroad companies have been merged in and consolidated with said Central Pacific Railroad Company; and

Whereas the United States, upon the demand of the said Union Pacific Railroad Company, have heretofore issued, by way of loan to it and as provided in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at 6 per cent. per annum, payable half-yearly, the principal sums of which amount to $27,236,512; on which the United States have paid over $10,000,000 interest over and above all reimbursements; which said bonds have been sold in the market or otherwise disposed of by said corporation; and

Whereas said corporation has issued and disposed of an amount of its own bonds equal to the amount so issued to it by the United States as aforesaid and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated and secured thereby; and

Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United States, of the said Central Pacific Company amount in the aggregate to more than $96,000,000 and those of the said Union Pacific Railroad Company to more than $88,000,000; and

Whereas the United States, in view of the indebtedness and operations of said several railroad companies respectively and of the disposition of their respective incomes, are not and cannot, without further legislation, be secure in their interests in and concerning said respective railroads and corporations, either as mentioned in said acts or otherwise; and

Whereas a due regard to the rights of said several companies respectively, as mentioned in said act of 1862, as well as just security to the United States in the premises, and in respect of all the matters set forth in said act, require that the said act of 1862 be altered and amended as hereinafter enacted; and

Whereas by reason of the premises also, as well as for other causes of public good and justice, the powers provided and reserved in said act of 1864 for the amendment and alteration thereof ought also to be exercised as hereinafter enacted: Therefore,

Mr. THURMAN. Mr. President, I shall open the discussion of this bill with as much brevity as is possible consistent with an explanation of it and of the ability of the companies to comply with its provisions; and I shall, for to-day at least, leave the discussion of the question of the power of Congress to pass it to another member of the committee that reported it; and perhaps I may never have any occasion to refer to that question, but should I have it will be at some future stage of the debate.

The amendment reported by the Judiciary Committee is a substitute for the original bill. If we proceed under the rule without any understanding, the substitute will be amendable only in the first degree. It has been the custom, unless indeed there has been some new rule adopted, in cases of this kind to adopt the substitute by unanimous consent and then treat it as an original bill, and therefore amendable in the second degree.

The VICE-PRESIDENT. The Chair, when the bill was reported, stated that this substitute would be treated as the original bill.

Mr. THURMAN. It will be considered, then, as adopted and treated as the original bill and amendable in the second degree. That is obviously required by fairness to those who may wish to amend it.

Mr. President, this is a bill to create, in the Treasury of the United States, a sinking fund for the purpose of paying as far as it would suffice, the debts of the Union Pacific and the Central Pacific Railroad Companies. The bill, as originally introduced, embraced several other companies, namely, the Central Branch Union Pacific Railroad Company, the Sioux City and Pacific Railroad Company, and the Kansas Pacific Railway Company; but in the substitute now under consideration the provisions relative to those three companies are stricken out for the reasons stated in the report; and, as it is very short, I will read that paragraph of the report:

> The condition of the Central Branch Union Pacific Railroad Company, the Sioux City and Pacific Railroad Company, and the Kansas Pacific Railroad Company is so different from that of the Union Pacific and Central Pacific, and there being questions peculiar to each of those three companies, we think it advisable to strike the provisions relating to them out of the bill, with a view to report hereafter a bill or bills adapted to their circumstances and the rights of the Government.

The substitute therefore embraces only two companies, the Union Pacific Railroad Company and the Central Pacific Railroad Company; and now the first thing to which I wish to call the attention of the Senate is the necessity for some such legislation as that which is proposed; that is to say, for the creation of a sinking fund. I wish, however, first to premise that this is not a sinking fund for the benefit of the Government alone, although it is one of the principal, if not the principal, creditors of the two companies; because the bill carefully guards the rights of every one of their creditors, so as to give the Government no advantage whatever over any creditor that it does not now possess, the sinking fund, with all its accretions, with all its accumulations, being made a security for the debts of the companies according to their just priority, precisely as such a fund would be distributed in a court of equity.

Now as to the necessity of this legislation. The Government loaned to the Union Pacific Railroad Company, in bonds running thirty years and bearing interest at the rate of 6 per cent. per annum, $27,236,512, omitting cents. Thirty years' interest on that amount would be $49,025,722, and some cents, making the amount that would be due to the Government, for the Government pays the annual interest on these bonds, (they are Government bonds,) at the maturity thereof, $76,262,235 if the Government should receive in the mean time no reimbursement of the interest paid; but the Government is entitled to reimbursement annually under certain provisions in the charter. By one of the sections of the original act of 1862 the Government is entitled to 5 per cent. of the net earnings of the companies, to be applied toward the reimbursement of the Government the amount of interest and principal of its loan. By another section, as amended by the act of 1864, it is entitled to one-half of the account which each company may have against the Government for the transportation of Government troops, munitions of war, mails, and material of whatsoever kind, and which is familiarly known as the half-transportation account. Those two sums the Government is entitled to apply annually toward reimbursing itself the interest which it pays on its subsidy bonds, and if anything were over toward the liquidation of the principal. The probable reimbursement from these sources, should the laws remain unchanged, would be, in the case of the Union Pacific, about $245,661 annually from the 5 per cent., and $421,311 annually from the half transportation, making in the whole $666,972

per annum, which for thirty years would make $20,000,100 which the Government would have been reimbursed. Deducting that from the principal sum loaned by the Government and thirty years' interest, which I have already stated would be, principal and interest, over $76,000,000, and there will probably remain due to the Government, at the maturity of the Government loan should the laws remain unchanged, the sum of $56,203,000 from the Union Pacific Company.

In respect to the Central Pacific the case is this: The Government loan made to it was $27,855,680. The interest upon that for thirty years would be $50,140,224, making a total of $77,995,804. The probable reimbursement from the 5 per cent. of net earnings and the half transportation would be about $13,000,000, leaving probably due, should the laws remain unchanged, at the maturity of the Government loan, $62,995,804, which added to the amount that probably would be due from the Union Pacific Company makes a grand aggregate of $119,048,879 that will probably be due by these two companies in the years 1895 and 1896 should the laws remain unchanged.

And that, Mr. President, is without counting interest upon the interest which the Government annually pays. No one pretends that the Government has a right to compound interest upon the interest which it annually pays, but it is contended by the law department of the Government that upon each installment of interest which the Government pays it has a right to compute interest without rests until the maturity of the bonds; the companies themselves not being bound to pay any interest until the maturity of the bonds except so much as may be paid by the 5 per cent. of net earnings and by the half-transportation account. But, omitting any such accumulation of interest upon interest, which would immensely enhance this sum of $119,000,000, and taking it according to the claim of the companies, that the Government has to lose all interest upon the annual payments of over $3,000,000 which it makes for these two companies, yet the amount which these two companies will probably owe to the Government at the maturity of these bonds would not be less than $119,000,000 or $120,000,000, unless indeed the business of the companies should so immensely increase in that time as to make the payment of the 5 per cent. of net earnings and the half-transportation account far greater than it ever yet has been; and even if that were the case, even if the receipts from these two sources were doubled, still the amount that would be due to the Government at the end of this loan could not be less than $80,000,000.

Now it does seem to me that this bare statement of the amount for which the Government will be the creditor of these companies ought to satisfy anyone that some step should be taken by Congress to secure it from loss. But it is not alone that the Government is this great creditor. By the act of 1864 it gave up its priority of lien upon the road, and there are creditors, the first-mortgage creditors holding bonds of the companies, amounting to precisely the same sum as the principal of the Government loan, that is to say, amounting to over $55,000,000, and which are a lien paramount to that of the United States. The Government, then, is subordinate to a first mortgage on these roads of $55,000,000, which added to the amount that will be due to the United States at the end of the loan, say $119,000,000, will make one hundred and seventy-odd millions of debt, to say nothing of the debt which is interior in lien to that of the Government.

Manifestly, it does seem to me that this bare statement shows that it is the duty of Congress to begin to look out for some security that this immense amount shall not be lost. Should it be repaid to the

Government yet these companies will have been the recipients of the most lavish bounty that any government ever bestowed upon corporations since the world was made. The subsidies in land, the loan of $55,000,000 at 6 per cent. interest not reimbursable until the end of the thirty years, and the rights and franchises that were given to these companies, all made the most magnificent bounty that any government ever bestowed upon such corporations.

But, Mr. President, there are other reasons that should induce Congress to interfere, and one of them, and in my mind a very potent one, is that these companies up to the 1st day of January last had not provided one dollar of a sinking fund to pay their indebtedness to the Government. They had provided some sinking funds for other portions of their indebtedness, some of which was inferior to that of the Government, but not one dollar had they provided as a sinking fund to meet their debt to the Government when that should become due. But instead of doing so, although they were in the receipt of such incomes as no other railroad companies in the United States received, the richest income and the most net earnings that any companies received, instead of providing a sinking fund to meet their indebtedness to the Government when it should mature, they have divided among their own shareholders the great portion of their net earnings, paying in the case of the Union Pacific 8 per cent. per annum on the nominal value of the stock, which makes nearly 12 per cent. on its market value, and in the case of the Central Pacific paying from 8 to 10 per cent. upon the nominal value of the stock.

Mr. McCREERY. How long?

Mr. THURMAN. For years past, thus distributing every year from four to five million dollars—you will find it precisely in the report of the committee—to their shareholders without providing one dollar to meet this vast indebtedness to the Government of the United States.

Now, Mr. President, can there be any doubt of our duty to exert our power, if we possess it, to compel these companies to think something of the Government as well as to think of their own pockets, to think something of what is due to the Government as well as to think of the pockets of the shareholders?

I have spoken of the indebtedness to the Government and its immense amount as one reason why Congress should interfere; but other indebtedness, the indebtedness of the companies to others than the Government, must also be taken into consideration when we are determining whether there is a necessity for this legislation; and looking at that we find that the indebtedness of the Union Pacific, other than the indebtedness to the Government, is $51,497,000, and of the Central Pacific $55,457,000, making an aggregate of $116,954,000 which those companies owe besides their indebtedness to the Government, and this exclusive of their floating debt. However, their floating debt is so small that I lay no stress on it. It need not be taken into account. In that respect these two companies are better off than any companies I know of in the Republic.

If I have made it apparent that some legislation is necessary upon this subject, the Senate will be prepared to hear what legislation it is that the Judiciary Committee propose; and to explain that I must take up the bill and go over it in a somewhat tedious manner, and speak of its sections somewhat in their order and trouble the Senate to hear some of them read.

The first section of the bill provides—

That the net earnings mentioned in said act of 1862—

That is the first act on the subject of these railroads, the charter—

of said railroad companies respectively shall be ascertained by deducting from the gross amount of their earnings, respectively, the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sums paid by them, respectively, within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of 1864 as well as of said act of 1862. This section shall take effect on the 30th day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or of either of said railroad companies existing prior thereto.

That is, prior to the 30th of June next. The reason of this last clause is that a suit is now pending in the Supreme Court of the United States, in which a judicial determination is sought as to what is the meaning of that provision in the charter which provides that the United States shall receive 5 per cent. of the net earnings, and very dissimilar views are taken of the right of the United States under that clause by the law officer of the Government on the one side and by the companies on the other. The law officer of the Government insists that there should be deducted from the gross receipts of the companies nothing but their operating expenses, in order to ascertain the sum upon which the 5 per cent. is payable to the Government; in other words, that "net earnings" in that clause of the charter consist of gross receipts, less operating expenses alone. On the other hand, it is contended by the companies that "net earnings" are only what remains to each company after it has paid all its interest upon its debt which is inferior in lien to that of the United States, as well as that which is superior, and all other expenses of every kind and description; that, after deducting all these from the gross receipts, what remains and would be distributable as dividends to the shareholders is the sum upon which 5 per cent. is to be computed and paid.

That question, so far as the past is concerned, your committee propose to leave for the decision of the Supreme Court without any retroactive legislation that would touch it at all. They propose, therefore, to define "net earnings" simply for the future, and not for the past, and as a fair adjustment between these conflicting claims of the Government on the one side and the companies on the other, they think it would be reasonable, and they so report, that in addition to operating expenses and the amount for keeping the road in repair each company ought also to be allowed to deduct the interest on its first mortgage, which is prior in lien to the lien of the Government, and that then what remains will be the sum 5 per cent. of which shall be payable to the United States as "net earnings" under this provision of the law.

I think that that is a perfectly fair proposition. The inclination of my mind is to believe, especially in view of the eighteenth section of the charter, that the interpretation of the law by the Attorney-General is the correct interpretation; but is a debatable question, a fairly debatable question, whether his interpretation is right or whether it is not. But we place our right to define for the future what shall be net earnings upon the control which Congress has over this charter both by the general principles of constitutional law and by the express right reserved to Congress to alter, amend, or repeal the charter. Upon either one of these grounds it seems to us that we have the right to prescribe what shall be considered net earnings, as

least for the future, and we think that what we do prescribe is perfectly fair and perfectly just.

And here I must remark that the substitute reported by the Judiciary Committee is more favorable in this respect to the companies than was the original bill or than was the bill reported to the Senate by the Judiciary Committee nearly two years ago, and which is precisely the same as Senate bill No. 15 which was last referred to the committee. That bill, reported in July, 1876, and the same bill which was introduced by me and referred to the committee at the last session, did not allow each company to deduct from its gross receipts the interest upon its first mortgage before the computation of 5 per cent. began. We have made the bill more lenient to the companies by allowing that deduction to be made. Nor have we taken any exception to a practice that has been pursued by both these companies—and which every man familiar with railroads and their management will understand perfectly well is to a great extent an evasion—a charging to the account of operating expenses very large sums of money used in the reconstruction, the rebuilding of the road. Take, for instance, the Union Pacific. Here are many miles of rails that have been relaid on that road, steel rails substituted for iron rails. Here are many thousands and thousands of ties, new ties, that have been laid in that road. There are many other improvements and repairs of that kind, all of which that company has charged to "operating expenses" and not to the "construction account."

I think it has been generally held that where a State has reserved the right to a certain per centum upon the net earnings of a railroad by way of tax or otherwise, the company has no right to deduct from its gross earnings anything but the cost of ordinary repairs and the operating expenses; that it has not a right to rebuild the road and immensely improve it as by the substitution of steel rails for iron rails and charge that which properly belongs to the construction account to operating expenses. But we have made no point at all about that in this bill. We have said, on the contrary, that they may deduct operating expenses and the cost of repairs, and, if this reconstruction comes fairly within the word "repairs," the company can proceed to repair the road in this way.

I wish, however, further to say that practically the difference would not amount to a very large sum, though it would amount to something, whatever interpretation may be placed upon these words, "net earnings," in the charter, because if you reduce the net earnings to the very lowest sum, as contended for by the companies, you only make it necessary to require the companies to pay a so much larger sum into the sinking fund, if you are to have any sinking fund that is worth the name. The only advantage the Government has in reducing the deductions from the gross earnings in order to obtain the 5 per cent. is that then a larger sum is payable annually to the Government, which it is authorized by the charter to apply immediately to reimburse itself the interest it has paid; and, therefore, it saves interest upon that sum thus paid.

That explains the first section. The second section is:

> That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking fund hereinafter provided, for the uses therein mentioned.

The only change in the existing law that that section makes is

that it turns one-half of the transportation account into the sinking fund; it leaves the other half to be applied precisely as the law now applies it, making not the slightest change in that respect. But it is perfectly obvious that if a sinking fund in the Treasury is to be created this half transportation account ought to be a part of it. It would be absurd that the Government should pay out to the companies the half transportation account, and then demand of the companies to repay it into a sinking fund. The simple way to do it is for the Government to retain that and turn it into the sinking fund. There can be no objection, therefore, I take it, if you are to have a sinking fund at all, to that provision of the bill.

The third, fourth, fifth, seventh, and eighth sections of the bill relate to the sinking fund. The third section which constitutes it is in these words:

That there shall be established in the Treasury of the United States a sinking fund, which shall be invested by the Secretary of the Treasury in bonds of the United States; and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereinafter mentioned. And in making such investments—

I call the attention of the Senate particularly to this provision, because it may need explanation—

And in making such investments the Secretary shall prefer the 5 per cent. bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States.

The Senate will see that the committee propose that this sinking fund shall be invested in bonds of the United States. I do not know that there is any objection to that. But the bill provides that in making the investment the Secretary shall prefer the five percents. Why is that? For this reason: The debt of the United States, the bonds of the United States, bear either 6 per cent., 5 per cent., 4½ per cent., or 4 per cent. interest, and if the Secretary is to invest in them he is to choose between these kinds of bonds. But the six percents. are all subject to call now with the exception of the 1881's, and they will be payable three years from this date.

Mr. ALLISON. And also except the bonds issued to these companies by the Government bearing 6 per cent. They are not immediately payable.

Mr. THURMAN. They are not due until 1895.

Mr. ALLISON. They are not subject to call.

Mr. THURMAN. They are not subject to call. If they were it would be obvious that you might take them. Any investment, therefore, in the six percents is out of the question. They are all subject to call, and the Government certainly does not intend, at least I hope it does not intend, to extend the 6 per cent. loan for twenty-three years when it can borrow as much money as it wants at 4½ and possibly at 4 per cent. The six percents are therefore entirely out of the question. The objection to the four-and-one-half percents is that they are too short in time also. They would do very well because, for the reason that I will specify, they would produce an amount of interest equal to that which the company has to pay in the end; but they are too short. The four percents are not sufficient in amount. That leaves but five percents as the great resource of the Secretary of the Treasury for the investment of this sinking-fund. They are long enough. They mature just about the time that the Government loan matures, and the rate of interest is such that, compounded as it is required to be by this bill, the amount of interest that will accrue upon the sinking-

fund will be equal to the interest which the company will have to pay at the maturity of the Government loan. The companies have to pay 6 per cent. interest but, mark it, there are no rests. Twenty-three years from now they have to pay the accumulated 6 per cent. interest, but there are no rests. If any one will make a computation he will find that money at 5 per cent., compounded semi-annually, as it is here provided it shall be compounded, will produce, in the time we have to consider, a larger sum than 6 per cent. upon the same amount of money not compounded. It is obvious that the amount of accretion on this sinking-fund, that is the interest upon it, ought to be sufficient to meet the interest which the companies will have to pay for the same period of time upon the Government loan.

The 5 per cent. bonds even if purchased at a premium of 10 per cent. will produce that interest, owing to the compounding of interest, as I have stated. The provision of the bill, therefore, in this respect is perfectly fair to the companies and is just to the Government.

Section 4 provides:

That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company—

Which is the first company named in this bill—

not applied in liquidation of interest—

That I have already spoken about, one-half of the transportation account—

and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of $1,200,000, or so much thereof as shall be necessary to make the 5 per cent. of the net earnings of its said road payable to the United States under said act of 1862, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to 25 per cent. of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the 31st day of December next preceding.

Then there is precisely the same provision in regard to the Union Pacific except that the annual sum to be paid by it, in addition to the 5 per cent. and the half transportation account, is $850,000. The reason for this difference in the sums will be seen by any one who will read the report. If the bill which we report shall become a law the amount which these companies respectively will have to pay to the Government will be substantially the same, about $1,900,000 a year; that is, including what they are bound to pay under the provisions of existing law. The reason why more is required by this bill to be in cash into the sinking fund by the Central Pacific is that the amount of 5 per cent. of the net earnings of that road and its half transportation account are not equal to the 5 per cent. and the half transportation account of the Union Pacific road. The transportation account of the Union Pacific road amounts annually to over $800,000, one-half of which is four hundred and odd thousand dollars; but of the Central Pacific the half transportation is only about one-half of that sum. In other words, the Union Pacific receives for transportation from the Government annually about twice as much as the Central Pacific receives. The consequence is that the amount which the Central Pacific will pay to the Government under the law as it now stands, or as proposed by this bill, as 5 per cent. of net earnings and one-half of its transportation account will not be as much by about $167,000, or perhaps something more than that, as the amount that the Government will receive from the Union Pacific. That will be seen if the Senate will look at the report. On page 5 of the report the committee, speaking of the Union Pacific, say:

From the foregoing it will be seen that the amount the company will have to pay

annually to the Government and the sinking fund, should the bill we report become a law, will be about as follows:

Five per cent. of net earnings payable under existing law, $245,661.

That is as near as we can estimate it.

One half transportation account, payable under existing law, $421,311.

Making $666,972, which the Union Pacific will in all probability have to pay in the future annually to the Government if the law be not changed at all. Then if our bill become a law it will have to pay into the sinking-fund:

| | |
|---|---|
| One half transportation account, say | $421,311 00 |
| Cash | 850,000 00 |
| Total | 1,271,311 00 |

Making an aggregate of its payment under existing law and into the sinking fund under the bill of $1,938,283.

Turning then to page 8 of the report we find in respect to the Central Pacific that 5 per cent. of its net earnings payable under the existing law may be estimated in the future at, say, $300,000, and the half transportation account payable under the existing law at $200,000, making $500,000. Then the bill provides that it shall pay into the sinking fund the other half of the transportation account, say, $200,000, and cash $1,200,000, making $1,400,000 into the sinking fund, and making a total payment to the Government under the existing law and under the bill which we report, in round numbers, of $1,900,000, which is substantially the same amount required of the Union Pacific.

But the Senate will observe one safety that these companies have, that whenever in any year 75 per cent. of their net earnings, as provided, will not be sufficient to pay all their operating expenses and their interest on the first mortgage, then, upon that being made manifest to the Secretary of the Treasury he may make an abatement for such year of the amount that is to be paid into the sinking fund; in other words, we will not, under any circumstances, require of them more than 25 per cent. of their net earnings. Neither for the 5 per cent. nor the half-transportation account, either under the existing law or under the bill which we report, and the sinking fund taken together will we require more than 25 per cent., and whenever it would require in any year more than 25 per cent., then the amount of cash to be paid into the sinking fund shall be reduced so that they shall not be required to pay more than 25 per cent.

Now, Mr. President, is not this a very liberal bill which allows these companies to retain 75 per cent. of their net earnings after the payment of their operating expenses and the interest on the first mortgage, in order to meet their other obligations and for dividends among their shareholders? No man can deny that it is a liberal bill; and if it had not been that your Judiciary Committee had no inclination to oppress these companies, not the slightest wish to do them any wrong, if the committee had not recognized the fact that it is for the interest not only of the companies but of the country and the public that the stockholders should be allowed to receive some reasonable dividends, because where roads pay dividends they are always better managed than where they pay none—if it had not been for these considerations, we might justly have required more onerous conditions than those that we have imposed by this bill. Am I right about that? It is shown by the report of your committee, by going over the receipts and expenditures of these companies for long periods, that they can comply with this bill and pay every dollar of interest annually upon their indebtedness, both that whose lien is inferior to that of the

United States as well as the first mortgage whose lien is superior; that they can pay every dollar interest upon their entire funded debt, pay all their operating expenses, pay to the Government what by existing law they are required to pay, and pay into a sinking fund what this bill requires them to pay and then have annually for distribution among their shareholders as follows: the Union Pacific about 4½ per cent. on the nominal value of the stock, or 6½ per cent. on its present market value; and the Central Pacific about 6.4 per cent. on the nominal value of the stock.

Mr. President, there is not one railroad I believe in fifty in the United States that makes such dividends. I do not think there is. There may be more than that, but the number that pay any dividends at all is very small. If any Senator wants to see what is the condition of the railroads in the United States, what companies pay dividends and what companies do not, I invite his attention to the last report of the Secretary of the Interior, pages 31, 32, and 33, where the earnings I believe of all the railroads of the United States are given, where it is shown what companies pay dividends and what companies do not, and where it is demonstrated that there are no companies paying such dividends as these companies are paying, and that they can pay the dividend I have named after having fully complied with the law, and without any increase of business. This may be seen by that report and by Poore's Manual to which the report refers. No man can think for himself on this subject and doubt for one moment that the business of those railroads, immense as it now is, is comparatively in its infancy. Just think of that great corporation, the Union Pacific Railroad, extending twelve hundred miles, which had at the report next before the last a floating debt of only $700,000, and had nearly $3,000,000 of available assets to pay at any moment. There is scarcely any railroad in the United States fifty miles long that has not a floating debt as large as that. The Central Pacific has substantially no floating debt at all. But it has a surplus of $10,265,000 and pays dividends of from 8 to 10 per cent. per annum to its shareholders and I believe pays them quarterly, I venture to say that in less than twenty years from now these corporations will be the two richest railroad corporations on the face of this earth. It may be said, then why do you want any sinking fund? If they will be the richest railroad companies in the world why do you want any security? You do not need it. Yes, Mr. President, we do need security, for experience has shown that no matter how rich a railroad corporation may become, security for its creditors is essential; and as my friend [Mr. BAYARD] rightly states, suppose the road is security, we do not want the road, we want our money.

The other provisions of the bill I do not know that I need to dwell long upon. Section 6 simply prohibits the payment of dividends when the company is in default for non-compliance with the law.

Section 7 provides that the sinking fund shall be properly apportioned between the two companies who contribute.

Section 8 provides that when the fund becomes distributable it shall be distributed according to the priority of lien of the creditors, thereby preserving every one's right precisely as a chancellor would do in marshaling the assets of an insolvent corporation or firm and distributing them among its creditors.

Allow me to say that if this bill should pass its only effect upon the first-mortgage bonds must be to enhance their value, because it would give them an additional security. They would have a right if the company did not provide for their bonds to come in first upon

this sinking fund, for their mortgage bonds mature at the same time the Government bonds mature. They would have the right therefore to come first upon this fund which would be in the Treasury and to receive payment without any expense of foreclosure of the mortgage or any trouble of being compelled to fight the road. It gives them, therefore, an additional security available at any moment when their bonds become due.

The tenth section simply makes it the duty of the Attorney-General to enforce the act.

The eleventh section declares that if there shall be a default in complying with the provisions of the charter and this act for six months, then it shall operate as a forfeiture of the charter, and proceedings shall be instituted against the defaulting company. Some exception was taken to that provision when this bill was under consideration a year ago. The truth is the provision is a lenient provision for the companies. Without such a provision the Government might proceed against a company wherever there was a cause of forfeiture without any delay, proceed against it instanter; but now this provision requires that that default shall continue for six months before the Government shall proceed to oust the company of its franchises.

The twelfth and thirteenth sections need no remark. They simply preserve the reservation of the right to alter, amend, or repeal, with a saving of all rights both in the United States and individuals which have accrued heretofore.

Mr. President, as I said before, I shall not now speak upon the power of Congress to pass this bill. My object has been simply in the opening of the discussion to explain the bill. I shall not speak upon the power to-day for another reason, and that is that the Senator from Illinois, [Mr. DAVIS,] who is on the Judiciary Committee, has prepared some remarks upon that subject, and I hope that he will take the floor when I conclude and give the Senate the benefit of his opinions upon the legal question. For myself I have only to say that to me nothing in the world is clearer than that we have the right and would have it if there was no reservation in the charter of a right to alter, amend, or repeal. But waiving that question, we have by well-settled adjudications of the Supreme Court of the United States and of a number of the State courts ample right to pass this bill under the reservations contained in the charter.

I will say in conclusion that I regret that the bill reported from the Railroad Committee yesterday is not on our table. If it was, and if I had examined it, I might be disposed to say what I think of its provisions; but as I do not know what that bill is at all, except from the newspaper report, (and I do not speak in the Senate upon a bill from the report of the newspapers,) and as there will be ample time to consider it whenever it shall come up, I shall say nothing about it to-day.

Mr. DAVIS, of Illinois. Mr. President, the Supreme Court of the United States has decided that the Pacific railroad companies are not bound to pay the interest before the bonds issued to them by the United States shall mature. The legislation on this subject implies an obligation to pay both principal and interest on the maturity of the bonds, but it does not require the payment of the interest as it semi-annually accrues. (United States *vs.* Union Pacific Railroad Company, 1 Otto, 72.) This being so, a plain arithmetical calculation will show that the debt due from these companies to the United States at the end of thirty years from the time the bonds were loaned

to them will be simply enormous. It requires no spirit of prophecy to tell that unless some adequate provision be presently made for the ultimate extinction of this indebtedness, the interests of the Government will be seriously endangered. To protect these interests the Judiciary Committee has reported a bill for the creation of a sinking fund to liquidate the principal and interest of the bonds. Every Senator will concede the necessity of some efficient legislative action on the subject, if Congress can lawfully interfere at all. Being satisfied that Congress possesses the right to pass this bill, I propose very briefly to consider that question.

It is said that the acts of 1862 and 1864 constitute a contract between the United States and the railroad companies accepting and acting under them which cannot be impaired by subsequent legislation, and Dartmouth College *vs.* Woodward (4 Wheaton, 518) is cited in support of the position. That leading case asserts in broad terms that a grant by a State is an executed contract, and as such is protected by that clause of the Constitution which prohibits a State from passing a law impairing the obligation of contracts. This cardinal principle in our constitutional jurisprudence has been recognized and enforced in an unbroken series of decisions with reference to executory as well as executed contracts. And the Supreme Court has reaffirmed it at its present term. (Farrington *vs.* Tennessee, unreported.)

Conceding that the constitutional prohibition touching the obligation of contracts is binding upon Congress, which it obviously is not, (for it is in express terms confined to the States,) the question arises as to the effect of the eighteenth section of the act of 1862 and of the twenty-second section of the act of 1864 upon the rights of the parties. The eighteenth section of the act of 1862 declares that—

> The better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said companies herein named, add to, alter, amend, or repeal this act.

If it were necessary to rest the right to pass this bill (which it is not) on this provision, the words used are, I think, sufficiently explicit to relieve the question from any serious doubt. In construing it the reasons which led to its adoption and the object to be attained by it should be fully considered. Congress was engaged at the time in a great national undertaking, and while in carrying it on the settled policy of the country seemed to require a resort to the instrumentality of private corporations, care was taken that the objects to be accomplished by the proposed legislation should not be misunderstood. These were the securing the present building and future operation of a road to the Pacific, which the Government could use for its own purposes in peace as well as in war. Congress had alone in view the promotion of the public interests and did not choose that those interests should be placed beyond its control.

The changes in legislation which might be necessary to secure those interests could not be foreseen. Time alone could determine them. Acting on the assumption that there must be an express reservation of power to make them, whenever they should be required by a just regard to the public welfare, Congress inserted in the act of 1862 such reservation. Of the time and occasion for the exercise of the power of amendment, alteration, or repeal Congress was constituted the exclusive judge. It could not act arbitrarily, for it must have "due regard for the rights of the companies" affected by its action. These

*words of limitation are to be understood as requiring* Congress not to *impose new duties without due consideration for the rights of creditors and stockholders. They were doubtless inserted for the better protection of the companies,* but *they were unnecessary.* It cannot *be supposed, even in case the power of* alteration or amendment were *absolute and unlimited, that Congress would* legislate without a proper *regard for the rights of the parties affected* by its legislation.

It is said that the right of amendment does not attach so long as the companies are not in default, and that they have constructed the roads, maintained them in good working order, and are ready on demand to furnish the Government with the needed transportation. This is true; but it is equally true that unless there be some provision for the payment of the subsidy bonds at maturity the Government will be in imminent danger of losing an essential benefit contemplated by the act. When they mature, the companies would, to say the least, be in danger of insolvency and the future use of their respective roads for Government purposes put in jeopardy.

A construction which would postpone action until this contingency should happen would defeat the very purpose of the provision, and cannot, on any recognized canon of interpretation, be maintained.

That provision was made to enable Congress to intervene whenever, in its opinion, intervention was necessary to secure to the Government at all times (but particularly in the time of war) the use and benefits of the road for postal, military, and other purposes. If a power be given by a statute, everything necessary to make it effectual or requisite to attain the end is implied. (1 Kent's Com., 464.) In this case, the ends in view being pointed out by the act of 1862, if there be a necessity for the creation of a sinking fund to attain them, then creating it at any time is authorized, and involves nothing beyond a just and fair exercise of an expressly reserved power.

It is, however, not necessary to place the authority to pass the proposed bill on the legislation of 1862, for the power conferred by the twenty-second section of the act of 1864 is without any limitation or condition. That section is in these words:

And be it further enacted, That Congress may at any time alter, amend, or repeal this act.

No such provision is found in any of the cases which affirm that rights under a charter cannot, during its existence, be withdrawn or impaired, or new obligations imposed on a corporation without its consent. But it is said that this section is applicable to the act of 1864, and not to the former act. This position cannot be sustained. Confessedly the latter act is at least an amendment of the former, and the companies accepting it are bound by the action of Congress within the limits of the power thereby reserved. But it is more than an amendment. Both acts are in pari materia, and to be construed as one, and this is the effect of the decision in Railway Company *vs.* Prescott, 16 Wallace, 603. That decision could not have been otherwise in the light of contemporaneous history. It was supposed that the road would be constructed under the liberal provisions of the act of 1862, but it turned out otherwise. The enterprise languished on account of the apprehended difficulties of executing it. No part of the road was constructed when the Thirty-eighth Congress met. The report of the Secretary of the Interior to the President, under date of December 5, 1864, refers to the fact that since the adjournment of Congress more than half a million of dollars had been expended upon the main line of the road west of Omaha; that forty miles were in process of construction, and he alludes "to the limited time which

had elapsed since the action of Congress, enabling the company to prosecute the work with energy." The undertaking was in fact abandoned, and an earnest appeal made to Congress for further aid.

This appeal was not in vain, for that body doubled the land grant and extended it so as to cover "coal and iron lands," gave priority to the lien of the bondholders over that of the United States, and provided for retaining but one-half of the compensation earned by the companies for the services they should render to the Government. In making these unprecedented concessions, without which the roads would never have been built, Congress thought fit to enlarge the power of reservation. The companies having availed themselves of this legislation and enjoyed its privileges and munificent bounties are bound by all its provisions. It will not do to say that this enlarged power only applies to the latter act. Both acts are inseparably connected. Both constitute the charter or contract of the companies. Under both the roads were constructed. To both the twenty-second section applies, and it is the last expression of the legislative will on the reserved power. Each company having accepted both acts has, in the most binding form, assented that amendments or alterations of either act should be made whenever the public interests and the adequate protection of the Government should, in the opinion of Congress, require them.

Conceding that the power must receive the same interpretation as if it were lodged with a State Legislature, the question recurs as to its nature and extent. In view of the improvident grants of special corporate privileges and of the undue means by which they have been sometimes secured, it has been deemed expedient in many of the States, since the decision in Dartmouth College *vs.* Woodward, to provide by a general law or a peremptory constitutional provision that all acts for the creation of incorporations may be altered or repealed by the Legislature at any time after their passage. Numerous cases arising under this power of reservation have been determined in the State courts. A special reference to all of them is, however, not necessary. In The Attorney-General *vs.* The Railroad Companies, 35 Wisconsin, 425, the supreme court of that State makes use of the following language:

> The power to repeal can bear but one construction. The power to alter depends on the meaning of the word "alter." To alter is to make different without destroying identity, to vary without entire change. A corporate charter of one kind cannot be altered to a charter of an entirely different kind; but a corporate charter may be altered so as to make it different in detail so long as the general identity of the corporation remains, so that it is varied without entire change. This is the obvious meaning to lawyer or layman. Arguments *ab inconvenienti* cannot weigh against the manifest meaning of the word used; they may go to impeach the wisdom of the power, but not to impair its import.

In the Commonwealth *vs.* Essex Company, 13 Gray, 239, the supreme court of Massachusetts, in speaking of the power in question, remarks that—

> This power must have some limit, although it is difficult to define it. Perhaps the rule is this, that where, under a power in the charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted.

These authoritative adjudications—and there is no decided case in conflict with them—conclusively establish that the provisions of the bill fall fairly within the scope and operation of the power reserved to Congress. To the same effect will be found cases decided by the Supreme Court of the United States. In Pennsylvania College cases, 13 Wallace, 190, that court declares that the power so reserved au-

thorizes "the State to make any alterations in the charter which the Legislature in its wisdom may deem fit, just, and expedient to enact." In Holyoke Company *vs.* Lyman, 15 Wallace, 500, the court holds that—

> The provision of the revised statutes of Massachusetts, chapter 44, section 23, and general statutes, chapter 68, section 41, declaring that acts of incorporation shall be subject to amendment, alteration, or repeal at the pleasure of the Legislature, reserves to the Legislature the authority to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the Legislature may deem necessary to secure either that object or other public or private rights.

And in Miller *vs.* The State, 15 Wallace, 498, that—

> The reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors, and for the proper disposition of the assets.

And in Tomlinson *vs.* Jessup, 15 Wallace, 454, that—

> The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligations.

At the last term of the court this question received special consideration. A railway company was authorized by its charter and the charter of other companies consolidated therewith to demand and receive such sum or sums of money "for the transportation of persons and property as it shall deem desirable."

The constitution of Wisconsin in force when the several charters were granted provides that "All acts for the creation of corporations within the State may be altered or repealed by the Legislature at any time after their passage." The Legislature passed an act fixing the limit of fare for the transportation of any person, classifying freights, and prescribing the maximum rates therefor. The holders of the first mortgage bonds in one case and the stockholders in another case, filing their bill against the railway company and the officers of the State to restrain the company from obeying and the officers of the State from enforcing the act, alleged that the bonds and the mortgage of the company to secure the payment of them were executed pursuant to law; that the rates charged by the company before the passage of the act did not produce sufficient income to pay interest on its debt, dividends, and expenses, and that the enforcement of the law prescribing reduced rates would cause the destruction of the securities of the company and impair the obligation of the contract between the holders of them and the company. It was contended that as long as the company operated its road it had the right to demand and receive a reasonable compensation for its services; that what constituted such compensation was for judicial determination and not legislative enactment; and that the act in question as effectually deprived the company of the beneficial use of its property and the means of performing its engagements with its creditors as if its material property and corporate rights were confiscated.

The court, however, held that the Legislature had under the reserved power the right to prescribe a maximum of charges, even although the income of the company may have been previously pledged as security for the payment of its obligations incurred upon the faith of the charter, (Peik *vs.* Chicago and Northwestern Railway Company, 4 Otto, 164;) and in a subsequent case held that the company could not recover for the transportation of property more than

the maximum fixed by the act by showing that the amount charged was no more than a reasonable compensation for the services rendered. (Chicago, Milwaukee and Saint Paul Railway Company *vs.* Ackley, *idem* 179.)

That doctrine was during the same term applied to cases arising in Iowa, Illinois, and Minnesota, and at the present term to a case in Ohio. Shields *vs.* Ohio involved the following facts: The constitution of Ohio, which took effect in September, 1851, ordained that "no special privileges shall ever be granted that may not be altered, revoked, or repealed by the General Assembly. (Article 1, section 2.) "The General Assembly shall pass no special act conferring corporate powers." (Article 13, section 1.) "Corporations may be formed under general laws, but such general laws may from time to time be altered or repealed." (Article 13, section 2.) A railway company was prior to that date incorporated under a charter, which fixed no limitation as to the rates for the transportation of persons.

In 1856, the Legislature passed a general law authorizing, upon certain terms and conditions, the consolidation of railway companies. Several corporations, including the one so operating under a special charter granted before the adoption of the constitution, availed themselves of the provisions of that act and formed a consolidated company. An act of the General Assembly in 1870 limited the charges for passengers to three cents per mile, and the court held that this limitation could be imposed without impairing the obligation of a contract, notwithstanding the absence of any provision in the charter of one of the companies reserving to the Legislature any control over fares and freights. The reasoning of the court is that by consolidating under the act, the respective companies accepted it with all its conditions and restrictions, and among them was the liability of the consolidated company to be dealt with by the General Assembly of Ohio in the exercise of the power reserved to it under the constitution of the State.

If the Legislature of a State can regulate fares and freights where they are not specifically fixed by an irrepealable charter, the authority of Congress to require under the power reserved by the act of 1864, that a sum be annually laid aside out of the earnings of these companies in order to provide for the ultimate payment of money advanced by the United States in the shape of bonds, cannot, I should think, be seriously drawn in question.

Mr. WINDOM. Mr. President, I move to lay aside all prior orders and proceed to the consideration of the bill (H. R. No. 2507) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1879, and for other purposes.

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MARCH 14, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved

July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. MATTHEWS. Mr. President, in pursuance of the instructions of the Committee on Railroads I had the honor to report a few days since Senate bill No. 512, which had been referred to that committee, a bill in relation to the Pacific Railroads, back to the Senate, with an amendment in the nature of a substitute, which, by common consent at the time, it was understood should be treated as the original bill, as in the case of the substitute offered by the Senator from Ohio, my colleague, [Mr. THURMAN,] reporting from the Committee on the Judiciary in the like manner Senate bill No. 15. The two bills cover precisely the same ground; they relate to the same subject and dispose of it each in its own way. One necessarily excludes the other, so that it is impossible to discuss either without understanding and examining both; and in order that the Senate may be brought to the orderly and proper consideration of the parliamentary questions involved in the two bills, it is my purpose on taking my seat to move that the bill reported from the Railroad Committee shall be substituted for the bill reported by the Committee on the Judiciary.

In order that the Senate may exactly understand what the propositions are which are contained in this bill, I will explain it section by section.

The first section provides for the foundation of a sinking fund, which, when it has accumulated for a certain period, shall operate to discharge to the extent of its amount the sum which at that period shall be found and ascertained to be due to the Government of the United States from the two railroad companies which are embraced in the provisions of the bill, the Central Pacific Railroad Company and the Union Pacific Railroad Company; and for the purpose of establishing the foundation of that sinking fund it takes the amount of money which shall be found due from the Government to those roads, respectively, up to and including the 31st day of March, 1878. There will then be due from the Government to the railroad companies an unascertained amount on account of the carriage and transportation of mails, troops, munitions of war, supplies, and public stores. This refers to that half of the transportation account which by the terms of the present law the Government would be bound to pay over to the companies, and it does not refer to that other half which by the terms of the present law the Government has a right to retain for its own use as a payment, a credit on the amount of the principal and interest of the debt due on the bonds or on account of the bonds from the railroad companies to the Government.

The Senate will remember that by the terms of the existing laws, to which I shall have occasion hereafter more specifically to refer, there are two sources from which the companies are expected either in whole or in part to reimburse to the Government its advances on account of the principal and interest of these bonds. One of those sources is this transportation account, and the right of the Government in reference to that is to retain one-half only of the sums accruing on that account together with 5 per cent. upon the net earnings of the roads from the time of their completion. Whatever may be due from the companies to the Government under the existing law on those two accounts up to March 31, 1878, remains untouched by this bill and is to be paid and accounted for as if no other legislation existed except that which is now in force.

Mr. THURMAN. Let me understand my colleague. Does he say that, if the Railroad Committee's bill passes the half transportation-

account and the 5 per cent. will still be payable to the Government as now?

Mr. MATTHEWS. Up to the 31st of March, 1878.

Mr. THURMAN. Not after?

Mr. MATTHEWS. Certainly not, and on that day the other half of the transportation account then due from the Government to the companies is to be retained by the Government as the beginning and foundation of the sinking fund provided by this bill.

I say that that sum is now unascertained and it is unascertainable at present. It will, in the opinion of the committee, amount to something considerably more than $1,000,000 from each company; but if less, the companies by the first section of the bill are bound to contribute such amount as may in addition be sufficient and required to make it equal to that sum of $1,000,000 for each; so that we commence the sinking fund on the 31st of March, 1878, with a capital of not less than $2,000,000. It will probably amount to a much larger sum.

By the second section of the bill the companies are required to contribute to that sinking fund annually the sum of $1,000,000 each—

In equal semi-annual installments on the 1st day of April and October in each year, commencing on the 1st day of October, 1878, and continuing such payments until the 1st day of October, in the year 1900. Interest on all sums placed to the credit of the sinking fund shall be credited and added thereto semi-annually at the rate of 6 per cent. per annum.

On the 1st day of October, 1900, the account between the United States and the two railroad companies must be stated and the balance ascertained. The bonds which the Government has advanced and which by their terms were payable in thirty years from their date will then all have matured; the average date of their maturity, I believe, is July 1898; some not falling due until the year 1900. Whatever interest in addition to that represented by the coupons payable and paid by the Government is to be calculated and added after the average maturity of the debt up to this period fixed for the termination of the sinking fund, October 1, 1900. This amounts to about twenty-seven months' interest on the whole amount of the indebtedness. Then the sinking fund, with all its accumulations, is to be subtracted from the amount thus found due, and that remaining and unpaid principal sum is then to be extended as to the term of its payment for the period of twenty-five years from that date, being payable semi-annually in equal installments, fifty in number, each representing that much principal, and the interest also payable each six months upon the entire unpaid principal sum.

These payments, by the terms of the third section of the bill, are to be in lieu of all payments required from the companies under the existing law, so that after March 31, 1878, the Government will have no longer its present right to retain one-half of the sums becoming due from it from time to time to the companies on account of transportation, and will cease to have a right to require the companies to account to the Government annually for 5 per cent. of their net earnings, and we receive from each company the sinking fund and the payments contributed to that every six months in lieu of and in satisfaction of every other money demand under the law in respect to the reimbursement to the Government of the principal or interest advanced by it on account of these bonds. In order more perfectly to secure to the Government its rights, as thus modified and rendered certain under this bill in conjunction with the statutes which then

may remain in force so far as they are unmodified by it, it is provided in the second section of the bill—

That on the failure or refusal of said companies, or either of them, to make any payment in accordance with the provisions of this act for the period of six months, then the provisions hereof in regard to the liquidation of said bonds and interest shall thenceforth, at the option of the United States, become inoperative as to such defaulting company; and the rights and powers of the United States in relation thereto, under the acts to which this is amendatory, shall be in full force and effect as if this act had not been passed, except as hereinafter provided. Or—

In the alternative—

Or the United States may, in case of default aforesaid, retain as payment on account thereof to the credit of said sinking fund any sum or sums that may accrue to said company so in default on account of the carriage and transportation of the mails, troops, munitions of war, supplies, and public stores until said default is removed.

This gives to the Government in that event the right to withhold the payment of anything whatever on account of what may accrue from the Government from time to time to these companies on account of public transportation until the default is extinguished.

In order to extend that security it is provided in the fourth section of the bill—

That the mortgage of the Government created by the fifth section of the act of July 1, 1862, amended by the act of July 2, 1864, shall not be in any way impaired or released by the operations of this act until the whole amount of the principal of said bonds, with the interest thereon paid by the United States as aforesaid, shall be fully paid; but said mortgage shall remain in full force and virtue, and upon the failure of either of said companies to perform the obligations imposed upon them by this act, said mortgage may also be enforced against such defaulting company for any such default.

So that the lien and security of the existing mortgage, the present statutory lien created by and existing under the two acts now in force and referred to in this section, continues and remains in force, not only for the purpose of enforcing all the conditions of that mortgage as they were prescribed by the original acts creating the lien, but the provisions of that mortgage by this act are extended so as to embrace as one of the conditions the breach of which would create a forfeiture of right under that mortgage a failure on the part of the companies or either of them to make any payments required by this bill.

The fifth section of the bill declares—

That this act shall take effect upon its acceptance by said railroad companies, or, if accepted by only one of said companies, then as to the company so accepting the same, which acceptance shall be filed with the Secretary of the Treasury within four months from the passage of this act, and shall show that said company or said companies have agreed to the same at a meeting of stockholders.

And it also provides:

And if said companies shall make punctual payment of the sums herein provided for, and perform all the conditions hereof, this act shall be deemed and construed to be a final settlement between the Government and the company or companies so performing the same, in reference to all matters relating to a reimbursement to the Government by said companies; but in case of failure so to do—

And this furnishes an additional security in the hands of the Government for the performance of the conditions prescribed by this bill—

Congress may at any time alter, amend, or repeal this act as to such company so making default.

Such, Mr. President, is, I believe, an accurate statement of the provisions of the bill.

Mr. THURMAN. Will my colleague allow me to interrupt him right there if it does not disturb him?

Mr. MATTHEWS. Certainly.

Mr. THURMAN. Do I understand that the purpose of his bill is to take from the Government any right to alter, amend, or repeal these acts, unless the company shall make default as stated in his bill?

Mr. MATTHEWS. My answer to that is that it takes or is intended to take from the Government no right whatever to alter, amend, or repeal this or either of the two preceding acts, so far as the Government has any such right to alter, amend, or repeal; that the specific object of the reservation here is to declare in express terms a right which in my opinion would not otherwise exist, in order to enable the Government, by modifications of the statute, if it should be passed into the form of a statute, to enforce the performance of the obligations of the statute. My colleague will understand better what my precise views are upon the point to which his interrogatory is directed when he shall have heard me further in my argument upon the point made and declared by him and more fully argued by his distinguished colleague in the committee, the Senator from Illinois [Mr. DAVIS] in reference to which I purpose to enlarge presently.

Mr. HOAR. Mr. President, before the Senator from Ohio passes from the point in regard to the fifth section, I desire to inquire of him whether it was the purpose of this bill to postpone for one year at least all exercise of the authority of the Government to enforce its rights against these railroad companies at their election. The fifth section seems to provide that the act shall take effect only upon its acceptance by the railroad companies, which acceptance may be made at any time within four months. The effect of that section therefore would be, if I correctly understand it, simply a postponement of all legislation upon this subject until the next session of Congress in regard to any railroad company that does not agree to this bill. I inquire if that was the intention of the act?

Mr. MATTHEWS. The intention of the act in that respect is precisely what the words of the act import. This bill contains a proposition and an offer from the Government of the United States addressed to these two companies severally. It is an offer which takes effect as a contract and a binding obligation upon both companies and Government when the companies shall in the manner pointed out in the bill have signified their assent to its provisions. As long as it stands upon its terms as an unaccepted offer, it binds no one; but if accepted within the time limited by the act in case it should pass, then it relates back and makes a contract according to its terms.

Mr. HOAR. Then I understand the Senator from Ohio to answer in substance the question proposed to him, in the affirmative, that it is the purpose of this bill to postpone any exercise of the authority of the Government over these railroads for twelve months.

Mr. MATTHEWS. There may be many exercises of authority on the part of the Government over these roads that it may have, entirely untouched by this bill.

Mr. HOAR. In this respect, I mean; on this point.

Mr. MATTHEWS. But so far as the enforcement of provisions for the collection of money, that is by this bill applied to the payment of the indebtedness of the companies to the Government, the Government by the bill, if it is passed into a law, gives the companies four months' time in which to consider and either accept or reject, and it stands, therefore, precisely as every other case between individual, natural persons, in respect to an offer proposed as the basis of a contract.

Mr. CHRISTIANCY. Allow me to ask the Senator one question: Is it the intention of this bill that the act shall go for nothing if the companies do not accept it?

Mr. MATTHEWS. The bill is based on the theory I have already stated, Mr. President, that it becomes binding only in the event of acceptance.

Mr. THURMAN. If we pass it they will accept it. You need not be alarmed about that.

Mr. MATTHEWS. As to that the gentleman may be better informed, or speak by higher and more direct authority than I am able to do.

Mr. THURMAN. Simply by the authority of common sense.

Mr. MATTHEWS. In that respect of course the Senator is amply armed with authority to speak. I am not authorized to speak on behalf of the companies. I do not represent them. I represent a committee of the Senate constituted for the purpose of considering questions relating to the connection between the Government and railroad corporations created or authorized to operate their roads under its authority.

The bill does not embody the propositions which were urged as the offer of the companies. That offer embraced other and large concessions to be made by the Government to the corporations, which the committee did not think were just and commendable; but it is based, as I have already more than once stated and as I shall undertake to prove it ought to be based, as all legislation on this subject between these parties having reference to this subject-matter ought to be based, on the consent of the party without whose consent it is my deliberate conviction that we have no authority of law, that we have no right as a government to insist upon exactions which violate the existing and established contract between the parties; for I am not one of those who believe that this Government differs from the State governments in being unrestrained in reference to its right to violate its own contracts. I believe it is so sovereign a body, it has so high and supreme a power that it can effectually bind itself so that itself cannot unloose itself. It is the essence of liberty, of freedom, of sovereign power, that the party in which it resides, while it is free from external restraint, from power imposed *ab extra*, from without, nevertheless by the mere function and exercise of independent and sovereign power can bind itself.

And now, Mr. President, allow me briefly to point out the essential differences between the bill of the Railroad Committee and the bill of the Judiciary Committee. The matter just observed upon is perhaps the most striking and essential distinction. The one proposes to alter a contract by a contract; the other is an act of power and nothing else. It either denies the existence of a contract, or it ignores it, or admitting it nevertheless asserts a higher power which can be legitimately exerted for the purpose of holding one party to his contract, requiring strict, literal, full performance, and add to its obligations any specification whatever without accountability and without compensation.

The next difference is that one is a settlement which is complete and final and puts an end to controversy and litigation. It contemplates nothing further in the way of legislation, as it contemplates no further necessity for legislation, whereas the bill promoted by my distinguished colleague from the Judiciary Committee in pursuance of its original idea of being dependent on nothing but the mere will of the Government does not even pretend to be a full and final settlement; its

language is most express and particular in describing it as an amendment to the act of 1862 and to the act of 1864 as the exercise of that power and right of amendment and as not excluding the idea of further amendment and continual and perpetual control of the Government over this whole subject at its pleasure without limitation of law, without limitations of contract, without any other limitation than the mere will of the majority in Congress. So that the original stipulations under which millions of private capital have been invested in works of great importance are now sought to be changed and moneys which expressly were not the subject of exaction are exacted, required to be paid without reference to the consent of the parties; and so as to be open to a succeeding Congress to come in and declare that not only the act of 1862 and the act of 1864 shall not stand in the way of any judgment and execution which Congress may see fit to render and issue against these corporations, but that the act of 1878 shall not, if passed, stand in the way at all, and that they may by subsequent legislation pursue the idea of confiscation embodied in the bill and declare that money which by law is now not due until 1895 and 1900, may become presently due, and require that the whole corporate property shall be delivered up to a new judgment and a new execution. And gentlemen who think that society is founded upon law, that one of its institutions prior in logical order, if not in point of time, is that which springs naturally and necessarily out of the very instinct of human nature itself, argue as though it rested not upon those instincts, not upon the nature of man, but on the will of the majority.

Mr. CHRISTIANCY. The instincts of human nature do not apply to a majority.

Mr. MATTHEWS. No; man and human nature would exist if there were but one; for the whole of human nature is in every man. What belongs to the individual person and the rights which he has, which belong to him as such, governments were ordained and framed to protect and to preserve, not to deny and destroy; and I assert that if the doctrine on which alone the proposed bill of the Judiciary Committee can be justified receives the assent of Congress and becomes a law, it is the most deliberate attack, in my judgment, upon the very idea and institutions of property and of contract that I know of in the annals of legislation in this country.

The bill of the Judiciary Committee, then, Mr. President, is not framed to compose the strife between these companies and the Government, for it carefully reserves plenary power to frame and pass any additional legislation of the same character or of any other character that any future Congress may be inspired to adopt.

Another difference between the bills is in reference to the rate of interest allowed upon the accumulations of the sinking fund. The bill of the Railroad Committee allows at the rate of 6 per cent. per annum; the bill of the Judiciary Committee allows but 5 per cent. It need not have allowed anything; but upon the theory that we are trying to do something that the companies will accept, upon the theory that in a business-like way we are addressing ourselves to the amicable settlement of an important litigation, involving not only public interests otherwise affected, but millions of money to become due, it considers as one of the elements to be considered in that connection that if for our own better security we are asking these companies to pay into our hands semi-annually each $500,000, to be held by us for the purpose of being made ultimately to meet, in whole or in part, a sum to become due and not yet due from those companies

to us, that if we propose to them that we shall become, in advance of our legal right, the custodians of their property for our benefit, in order that in the mean time it may be held free from the contingencies and casualties of individual responsibility or probable solvency, we ought, I say, to take into consideration as an element to determine the reasonableness of the proposition that if these companies, pursuing this same line of policy, intent on heaping up security and money against the day of payment, were to do so according to their own discretion and make investments under their own control, they would be able safely and securely to themselves to make their money earn at least that amount of interest which they are required to pay; they would be able to accumulate it at compound interest at a rate which is in fact below the ordinary average of investments which they are able to make.

It is said or may be that injustice is done to the Government by compounding this sum, while it is allowed not even simple interest on the interest which it advances. There is really no reason for comparing the two. The Government is not allowed interest on its advances of interest simply because that is the contract. It agreed, as an inducement, as a consideration for the continuation of these works, that the money that it advanced by way of interest should not be payable by the companies back again until the maturity of the principal of the bonds; and, as interest only accrues by virtue of express terms of a contract or by law for the forbearance of a debt after-due, there is no interest due from the companies to the Government on any of the advances made by the Government to the companies.

Mr. THURMAN. Will my colleague allow me to ask him a question right there, if it does not disturb him? I understand that my colleague advocates his bill on the theory that we are making a new contract with these railroad companies; that this thing ought to be done by contract, and not, as a celebrated Chief-Justice would say, by main force. I submit to him, therefore, as a business man and as representing the interests of the Government, whether, if we are to make a new contract with these people, it would not be advisable to make a better contract than for us to pay compound interest and they pay simple interest?

Mr. MATTHEWS. Although not a Yankee in the sense in which that word is sometimes used, implying particular sharpness in the making of bargains, I beg to say in answer to my colleague that I believe it to be the duty of the Government, standing to-day just where it is, to make the very best bargain attainable; but I will remind my distinguished colleague of a maxim which he must have forgotten, I think, when he drew his bill, and that is that it takes two to make a bargain. The question is not what we would like to get, but it is what we can get, taking into consideration as one of the elements for answering that question what it is we can get our adversary to agree to give.

But in reference to this sinking fund as between the two bills, there is one striking difference in which I think my colleague cannot charge the Railroad Committee with having been neglectful of the interests of the Government as contrasted with the greater astuteness in that respect of the Committee on the Judiciary. While we were limited and restrained by the circumstances in getting all we wanted by the necessity of having to ask the assent of those with whom we were dealing, we have, nevertheless, gone upon the principle that whatever we did get we should get for the benefit of the Government. Every dollar that is paid into the sinking fund, under the bill which

I am urging on behalf of the Railroad Committee, goes into the Treasury of the United States as the money of the United States, becomes, *eo instanti*, its property, subject to appropriation and application precisely as it sees fit. No one else can make any claim to it. On the other hand, all this effort, all power on the part of Congress as embodied in the bill from the Judiciary Committee, results presently, so far as this act of legislation is concerned, in establishing a sinking fund in the Treasury of the United States, to be cared for by the United States, to be invested by the United States, for which the United States is to be responsible, not for the benefit of the Government, but for the benefit of the fortunate holders of prior liens, first-mortgage bondholders, in respect to whom we are not legislating, in respect to whom we are not called upon to legislate, who are making no complaint, who are asking for no favors, who are asserting no rights, who are receiving their interest regularly, and who, if not, have their security in the shape of a first mortgage upon the same property which is held as our security, and which they can enforce according to their own will whenever a default occurs.

By the provisions of the bill of the Judiciary Committee this sum of money, including the very amounts still preserved to the Government, which, by the present law, belong to the Government and no one else, free from the first mortgage of the bondholders, is released by the Government, not to the companies but to the first-mortgage bondholders and to any other holders of bonds or other claims against the companies which may be prior equitably in point of lien to the security of the Government.

Mr. THURMAN. Will my friend state that proposition again; for, if I understood him, he is certainly mistaken?

Mr. MATTHEWS. My statement, as I understand it, is this, that the bill of the Judiciary Committee instead of collecting a sinking fund for the sole and exclusive use of the Government of the United States in order to extinguish the claim which the United States shall have against these railroad companies at the maturity of its bonds, carefully collects a sinking fund in respect to which, at that time, the United States will have no lien whatever, except subject to the prior rights of the first-mortgage bondholders.

Mr. THURMAN. I understood my colleague—perhaps I misunderstood him—to say that we put money into the sinking fund, to which the United States has a right under the existing law.

Mr. MATTHEWS. So I understand the bill.

Mr. THURMAN. Then my colleague is entirely mistaken. We do not put one dollar into the sinking fund, to which the Government has a right under the existing law; not one dollar.

Mr. MATTHEWS. Let me inquire of my learned colleague whether the sinking fund created by his bill does not consist, first, of the amount that would otherwise be due from the Government to the railroad companies on account of public transportation; second, what would be due from the companies to the Government under the existing laws on account of the 5 per cent. on the net earnings, to which is to be added in the one case, $850,000, in the other case $1,200,000, unless it shall go to the extent of 25 per cent. of the net earnings?

Mr. THURMAN. My colleague certainly cannot have read the bill with his usual care, and certainly not the report. The bill is clear enough. Not one dollar of the 5 per cent. goes into the sinking fund under the Judiciary Committee bill, and not one cent of the half-transportation account which the Government is now authorized to retain by existing law goes into the sinking fund. The sinking fund is con-

stituted of two items, of the half-transportation account, which under existing law the Government is bound to pay over to the companies, and of an additional sum to be paid by each company, $850,000 annually by the Union Pacific and $1,200,000 annually by the Central Pacific. Every dollar that under the existing law these companies are bound to pay to the Government, and which under existing law the Government has a right to immediately apply toward reimbursing itself the interest it has paid—every single cent of that remains under the existing law. Not one cent of it goes into the sinking fund.

Mr. MATTHEWS. Then the only error into which I have fallen is as to the constitution of the sinking fund under the bill of the Judiciary Committee, and not as to the application of the sinking fund which is actually constituted by it.

Mr. THURMAN. Will my colleague allow me to interrupt him, if it does not disturb him too much?

Mr. MATTHEWS. Certainly.

Mr. THURMAN. Undoubtedly the sinking fund under our bill is to be marshaled and applied precisely as a chancellor would apply it, and any other application of it would be a violation of the rights of those who have liens prior to ours.

Mr. MATTHEWS. In other words, it is literally true, as I stated, that the sinking fund established by the bill reported by the Railroad Committee goes to the exclusive benefit of the Government of the United States, and is intended and can only be applied to the payment of the debt due to the United States when it matures, whereas the sinking fund specifically created by the bill reported from the Committee on the Judiciary is not to go primarily or exclusively to the benefit of the United States, but is to be applied to the payment of the debts of the company in the order of priority of their liens, as appears by the eighth section of the bill of the Judiciary Committee, which declares—

> That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order.

Therefore, Mr. President, in my judgment it is a legitimate argument against the merit of the bill of the Judiciary Committee that this sinking fund so carefully ordered and provided in excess of the present legal obligations of the company, is to be accumulated for the benefit of others first than the United States itself, whereas the bill of the Railroad Committee deals with the question before Congress, namely, a settlement of an existing controversy, and a provision for security in the future in respect to the rights of the United States to the exclusion of all other obligations of these companies in respect to their indebtedness.

Mr. President, having now pointed out the differences between the two propositions, I purpose to discuss questions arising upon both.

Mr. THURMAN. Before my colleague proceeds to that, will he allow me to call his attention to one thing? He speaks of the sinking fund as provided by the Judiciary Committee bill as if it were solely for the benefit of the first-mortgage bondholders. Suppose it should be absorbed in the payment of the first-mortgage bondholders, what, then, is the remedy but to make the Government lien the first mortgage and to make the Government secure first?

Mr. MATTHEWS. Yes; and with an accumulation in the meantime that makes that Government debt worth more than any possible price that can now be fixed upon that entire property. It will then be invested, no doubt, with full power to legislate over what nobody else will see fit to make any claim of interest in.

The object that the Railroad Committee kept steadily in view was to diminish the amount and burden of this debt now from time to time so that it should not at the time of its maturity be unmanageable, so that it should not be excessive, so that it would not be beyond the reach and compass of the power of the debtor to pay in some reasonable way, and not allow it to accumulate in such a way, the company itself during the intervening time reaping all the results of the profitable operations of the road and at the time of the maturity of these debts having no longer any interest whatever remaining in the property other than to surrender it bodily as it might then be to be quarreled over and litigated about and devoured by its unsatisfied creditors. Suppose that the managers of these corporations could go on and accumulate a sinking fund in their own hands to be applied according to their own discretion until the date of the maturity of this debt and should then say we have been allowed to do this in our own right and according to our own discretion, and in our own hands, as we had the legal right to do, for as yet we owe no man anything which by law he can require and exact the payment of.

Now, then, having accumulated $100,000,000 in this way, we pay to ourselves our capital stock with all the dividends in the mean time that we have received, and so we pay ourselves out, and the first-mortgage bondholders and the second-mortgage bondholders and other creditors, secured and unsecured, may go into a court of equity and have the carcass of these roads marshaled, as the language is, in equity, according to the principles of chancery, and pay them in the order of the priority of their liens. That is the feast to which we are invited. I remember reading years ago of one like it, I believe it was on the island of Barataria, where the table was spread with delicacies from every clime that could tempt the appetite or satisfy the longings of hunger. Course after course was brought on by obsequious waiters; the viands smoked and the tempting fragrance tickled the nostrils of the waiting guest; but as fast as he reached out, the same waiters with the politest bow swept the dishes away, bringing on new ones, and so on until finally from mere exhaustion, without anything, without even the fragments of an ordinary meal, he was sent away with an empty and a crying stomach. So our astute and learned lawyers on the Judiciary Committee, with high-sounding claims and pretensions of absolute power to do whatever the interests of the Government might require, have put forth this bill to extort from these companies this sum, which at the time of its payment is to be handed over by the Government to some other waiting creditor who has a prior right, the Government being left to retain its debt and what it can make out of the property.

I say, Mr. President, that whatever merit as a legal proposition may be embodied in the proposition of the Judiciary Committee as a business proposition, as an ordinary and legitimate operation between parties dealing with each other upon the basis of mutual rights and mutual interests, the proposition embodied in the bill of the Committee on Railroads commends itself to that which the Senator from Ohio, my distinguished colleague, a little while ago referred to as the standard and the measure for trying them all, namely, the average common sense of mankind.

These very considerations, Mr. President, themselves referred to by my distinguished colleague in his argument the other day, furnish the ground and the necessity for legislation at all on this point. He referred to the peril incurred by the Government in allowing this matter to go on without making suitable provision. The necessity of making some suitable business provision for the future has been urged upon Congress time and again from the Executive Department in charge of this matter, and I notice that in the report made by the Government directors in the Union Pacific Railroad to the Secretary of the Interior and communicated to this present Congress at this session there is to be found this recommendation. They say:

If no definite plan for a permanent and final adjustment of the relations existing between the Government and company, relative to the full reimbursement of the former on account of the subsidy bonds issued to the latter, be adopted, then the Government directors would respectfully suggest that Congress be recommended to pass an act authorizing the Secretary of the Treasury to receive from the company, from time to time, such sums as it may elect to pay into his hands, for the establishment of a sinking fund for the extinguishment of the liability of the company to the Government on account of said bonds. It is believed that the company would at once, upon the determination of the 5 per cent. suit, avail itself of such a provision of law and commence payments under it for the purpose named. Such a plan would be a great improvement on the present want of one, and would be preferable to the establishment of a voluntary sinking fund, with its funds remaining in the hands of the company and subject to its control.

There is one other very important consideration which presents itself to the mind of every thoughtful person who considers this question. If in the long run the Government gets all that it could reasonably expect, gets back what it has advanced or shall have to advance and in the mean time has that reasonably well secured, so that there is to the apprehension of a business mind no real expectation of actual and absolute loss, but that some time or other, whether in a longer time or a shorter time the Government will get back the money that it has put in this enterprise, of what consequence is it really to the Government of the United States whether it is done in ten years, or in twenty years, or thirty years? Of what consequence is it whether it shall come in one payment, or whether it shall come in smaller payments at lesser intervals of time, spread over a longer period? I tell Senators one difference it makes. Has it occurred to those who have taken this matter into consideration who it is that is to pay this money? I have spoken of it as an illegal exaction from corporations created by the Government and authorized to operate under its laws, and it may be that a popular estimation of the rights of corporate bodies may make it appear as if any one earnestly urging leniency to debtors of that description are in some way betraying the rights of the Government and the people represented by the Government.

But I return to my interrogatory, who is to pay this money to be exacted from these corporations? Is it to come out of the body of their property? By no theory. That property is to be used, is to be kept in use, is to be preserved, maintained, operated, enlarged even, for a great public use, to be intact as to its capital and bodily form. Whence, then, out of what fund, out of what revenue, out of what income, are these annual burdens to be made? Out of the daily earnings of these roads? Out of the semi-annual profits of these companies? Mr. President, where do the companies get their money? How do they create revenue? How do they make income? Where do they and how earn any money to pay over to the Government? From whom does it come? It comes from every man, woman, and child who travels as a passenger on the line of those roads. It comes

from every pound of freight that is transported over their length, either in whole or in part. It comes from the business of the country. In other words, the amount of money levied by this bill, whichever passes, is a tax levied by Congress upon the commerce of the country that passes by way of transportation over these lines.

Suppose you make the payment large, frequent, excessive, burdensome, the companies must simply enlarge their rates, increase their tariff, magnify their own exactions on the private and the public interests which they were created to promote and to subserve. Is this good policy? Is this in the interest of the public? Is it for the benefit of the Government? If the amount of money which has been advanced by the Government to invest in the construction of these works could be entirely released in such a way as to inure exclusively and wholly to the benefit of the public interests created by and subserved by them, so as to lessen the tax otherwise necessarily imposed on the persons and property which pass over them, it would be good policy for the Government to abandon the claim and to release the debt. What interest has this Government distinguished from and outside of the interest of the public whom it represents?

Now, Mr. President, I propose to discuss what certainly is an essential preliminary question if it be not the main question for the consideration of the Senate, for I attack the bill proposed by the Judiciary Committee of the Senate on the ground that it is an invasion of the right of property and of contract, that it is not competent for the Government of the United States consistently with the constitutional principles according to which its action ought to be guided to pass any such act. The right to pass it is urged on several grounds. My distinguished colleague alleged in his argument that if in the act of 1862 and the act of 1864 there had been no reservation of the right of alteration, amendment, or repeal, still the power inherently existing in Congress would justify such an exercise of it, but that the terms and language of the reservation in the act of 1862 were sufficient to show the intention of Congress to make that right and its reservation one of the conditions on which all other rights under it were dependent, or if that were not so, then that the broader and more general language of the reservation of the right of repeal as contained in the act of 1864 being applied by a canon of interpretation to the act of 1862 as well, plainly shows such an intention.

These propositions I desire now to consider. I desire to consider them in the light of adjudged cases as well as of general principle, and I shall maintain, certainly with the greatest possible respect to the greater learning and wider experience of all the gentlemen on the Judiciary Committee coinciding in that report, that none of their propositions are well founded. My view of the nature of the law, and everything, finds its limitations in its nature; are expressed by that great political philosopher, the greatest in my opinion of his age, equal to that of any age, all the greater as a lawyer because he was not one professionally, Edmund Burke, who in one of his tracts on popery laws used these words:

> It would be hard to point out any error more truly subversive of all the order and beauty, of all the peace and happiness of human society, than the position that any body of men have a right to make what laws they please; or that laws can derive any authority whatever from their institution merely, and independent of the quality of their subject-matter. * * * All human laws are, properly speaking, only declaratory. They may alter the mode and application, but have no power over the substance of original justice.—*Tracts on Popery Laws*, chapter 3, part 1.

And that most illustrious of jurists known in our jurisprudence, who has illuminated not only its annals but the history of the country

itself by his sublime reason, his magnificent power of judgment, Chief-Justice Marshall, in one of his earliest decisions, Marbury vs. Madison, describing (and no man understood it better) the quality of our own National Government, said:

> The Government of the United States has been emphatically termed a Government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested right.

And added that—

> The question whether a right has vested or not is, in its nature, judicial, and must be tried by the judicial authority.—1 *Cranch*, 162.

It is said, and was said by my learned colleague, that the very principle of sovereignty which could not be parted with, which must always be reserved and preserved, needed no aid from any express reservations of power over any of the laws which it enacted, and by consequence, according to the logic of his argument, over the rights which vested in individuals under those laws. Now let us see again what the Supreme Court of the United States in the great case of Fletcher vs. Peck, in 1 Cranch, lays down as the right doctrine on that subject. Chief-Justice Marshall there said:

> The principle asserted is that one Legislature is competent to repeal any act which a former Legislature was competent to pass and that one Legislature cannot abridge the powers of a succeeding Legislature.
>
> The correctness of this principle, so far as respects general legislation, can never be controverted. But if an act be done under a law a succeeding Legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances have been made. Those conveyances have vested legal estates, and, if those estates may be seized by the sovereign authority, still, that they originally vested is a fact, and cannot cease to be a fact.
>
> When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community.
>
> It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation?
>
> To the Legislature all legislative power is granted; but the question whether the act of transferring the property of an individual to the public be in the nature of the legislative power is well worthy of serious reflection.—6 *Cranch*, 135.

The extract which I have just read is applicable to the powers vested by the Constitution of the United States in the Government of the United States, for it contains the general argument made by the Chief-Justice in that case before he proceeded to the consideration of the question whether the act of the Legislature in question in that case was void by reason of being in contravention of that clause of the Constitution which forbade any State from passing any law impairing the obligation of a contract.

I will now read an extract from the opinion of another most illustrious judge in Massachusetts, Chief Justice Shaw, in the case of The Commonwealth vs. The Essex Company, 15 Gray's Reports, 253. He says:

> Does this come within the power of the Legislature to amend or alter? It seems to us that this power must have some limit, though it is difficult to define it. Suppose an authority has been given by law to a railroad corporation to purchase a lot of land for purposes connected with its business, and they purchase such lot from a third party, could the Legislature prohibit the company from holding it? If so, in whom should it vest; or could the Legislature direct it to be vested in the grantor, or escheat to the public, or how otherwise?
>
> Suppose a manufacturing company incorporated is authorized to erect a dam and flow a tract of meadow, and the owners claim gross damages, which are assessed and paid; can the Legislature afterward alter the act of incorporation so as to give to such meadow owners future annual damages? Perhaps from these extreme cases—

for extreme cases are allowed to test a legal principle—the rule to be extracted is this: that where, under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted.

So, in the case of Miller *vs.* The State, decided by the Supreme Court of the United States, in 15 Wallace, 498:

Power to legislate, founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such a charter, and which by a legitimate use of the powers granted have become vested in the corporation, but it may be safely affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of the stockholders and of creditors, and for the proper disposition of the assets. Such a reservation, it is held, will not warrant the Legislature in passing laws to change the control of an institution from one religious sect to another, or to divert the fund of the donors to any new use inconsistent with the intent and purpose of the charter, or to compel subscribers to the stock whose subscription is conditional to waive any of the conditions of their contract.

So in the case of Holyoke Company *vs.* Lyman, in the same volume, page 519, the Supreme Court say:

Vested rights, it is conceded, cannot be destroyed or impaired under such a reserved power, but it is clear that the power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant and to protect the rights of the public, and of the corporators, or to promote the due administration of the affairs of the corporation.

And on page 522, in the same case:

Power to legislate, founded upon such a reservation, is certainly not without limit, but it may safely be affirmed that it reserves to the Legislature the authority to make any alteration or amendment in a charter granted, subject to it, that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, which the Legislature may deem necessary to secure either the object of the grant or any other public right not expressly granted away by the charter.

These expressions constitute the best judgments attainable in our decisions upon this question, and I have quoted them because they constitute the common ground of our argument, as they are relied upon not only by myself but by the distinguished member of the Judiciary Committee who specially argued this question. The difference between us, then, is not so much what constitutes a true expression of constitutional law on this point, as whether it is rightly applied in this case in the bill reported by the Committee on the Judiciary. The citations which I have made all agree, all assert that whatever rights have vested in the corporation by the legitimate exercise of the powers granted by the charter, although that charter contains the broadest and the most express reservation of the power of alteration, amendment, or repeal, are sacred rights and they cannot lawfully be touched. I have one case in my mind, the report of which I have not presently by me, a Massachusetts case, where under the poor laws of that State a man was supported as a pauper, and afterward became able to pay and was sued to recover the price of his board and lodgings. It was a case where a statute had been passed to authorize the suit, but after the event, and it was held that no retrospective legislation could impose upon a man a legal obligation without his consent arising out of a consideration which at the time when it passed did not create any such obligation.

The question then recurs, what is the nature of this corporation, what are the circumstances in this case to which it is sought to apply this principle? The nature of this corporation has been passed upon judicially more than once, and by the highest tribunal in the land, in

the case of the Railroad Company *vs.* Peniston, reported in the eighteenth volume of Wallace's Reports. I shall read from page 31. The case was one where the Legislature of the State of Nebraska had imposed taxes upon the body of the property of the Union Pacific Railroad Company, and the company sought to evade the payment of these taxes on the ground that they were merely an agent of the Government of the United States exercising powers and functions conferred upon them by the United States to that end, and that upon the principle on which the bonds of the United States were held to be exempt from State taxation and on which it was early decided that the franchise of the Bank of the United States could not be taxed by State authority, it was argued and claimed that the character of this corporation was such as to withdraw it from the exercise of State power in that respect, because it was laying a burden upon one of the functions and instrumentalities of the Federal Government in the exercise of Federal power for the purpose of carrying into effect Federal purposes. In deciding the case adversely to the claim of the company, the court say:

> It is insisted on behalf of the plaintiffs that the tax of which they complain has been laid upon an agent of the General Government, constituted and organized as an instrument to carry into effect the powers vested in that Government by the Constitution, and it is claimed that such an agency is not subject to State taxation. That the Union Pacific Railroad Company was created to subserve, in part at least, the lawful purposes of the National Government; that it was authorized to construct and maintain a railroad and telegraph line along the prescribed route, and that grants were made to it, and privileges conferred upon it, upon condition that it should at all times transmit dispatches over its telegraph lines, and transport mails, troops, and munitions of war, supplies, and public stores, upon the railroad for the Government, whenever required to do so by any Department thereof, and that the Government should at all times have the preference in the use of the same for all the purposes aforesaid, must be conceded.
>
> Such are the plain provisions of its charter. So it was provided that in case of the refusal or failure of the company to redeem the bonds advanced to it by the Government, or any part of them, when lawfully required by the Secretary of the Treasury, the road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the company by the United States which at the time of the default should remain in the ownership of the company, might be taken possession of by the Secretary of the Treasury for the use and benefit of the United States. The charter also contains other provisions looking to a supervision and control of the road and telegraph line, with the avowed purpose of securing to the Government the use and benefit thereof for postal and military purposes. It is unnecessary to mention these in detail. They all look to a purpose of Congress to secure an agency competent and under obligation to perform certain offices for the General Government. Notwithstanding this, the railroad and the telegraph line are neither in whole nor in part the property of the Government. The ownership is in the complainants, a private corporation, though existing for the performance of public duties. The Government owns none of its stock, and though it may appoint two of the directors, the right thus to appoint is plainly reserved for the sole purpose of enabling the enforcement of the engagements which the company assumed, the engagements to which we have already alluded.—*Railroad Company vs. Peniston*, 18 *Wallace, pages* 31, 32.

So that the company exists, according to this decision, for certain public uses, for certain public purposes, and, to enable it to accomplish those purposes, to effect those objects, to subserve those public interests, it is constituted by the acts of Congress under which it exists with certain corporate powers and certain corporate privileges and with the right to acquire property, to enable it to serve the public according to the terms of its engagement, which terms are prescribed in the acts of Congress and which cannot be enlarged by Congress without the assent of the company. But so far as it performs those purpose, accomplishes those objects, serves those ends, and ministers to the wants and uses of the Government—I say, as long as it fulfills these functions, it is accomplishing every purpose for which

it was organized and authorized to exist, and as long as it is in the performance of those public duties, it is not to be touched even by that hand of irresistible power which created it.

Mr. HOAR. I should like very much, if it would not be disagreeable to the Senator from Ohio, to ask him a question with view of understanding the exact position of the committee and himself in this matter, which has been a matter of a good deal of reflection with me. I desire to ask the Senator if he claims that it is not in the power of the Government of the United States, either under the general power of the Government over the class of corporations which it has itself created or under the reserved power to alter, amend, or repeal a charter, to require of the national banks of the country that they shall provide from their earnings a sinking fund for the security either of general creditors or of some particular kind of creditors, such as bill-holders, for example, or any other, and provide that that sinking fund shall be committed to a safe custody, either the custody of the bank or some other. In other words, conceding to the fullest extent that the prohibition against impairing contracts is binding upon the Government of the United States, either by the Constitution or by its constraint on the consciences of legislators, which we should regard as an equally strong obligation; and, conceding that this corporation has by contract vested rights, is it not within the ordinary functions of government to require of corporations, in whose solvency and power in the future to continue to discharge the functions for which they were created the Government is interested, that they shall make a certain provision out of their earnings for the payment of future debts which shall insure their solvency? If I make my point clear, I should like very much at his own time in his speech that the Senator from Ohio would state his views upon it.

Mr. MATTHEWS. Mr. President, I am inclined to suspect my distinguished friend, the Senator from Massachusetts, of perpetrating a little pleasantry upon me. He might as well have asked me if I did not believe that in this case Congress would have a right to do that which I am arguing they have not the right to do. He simply makes an illustration by substituting the national banks for the Pacific railroad companies. Now, I am arguing the question in reference to the Pacific railroad companies in view of general principles and the particular provisions of the acts of Congress applicable to those institutions. What the power of Congress may be over the national banks is a question to be determined by the terms of the acts of Congress creating them, the uses for which they were created, and the particulars in reference to which it is proposed to make the amendment or the change. I can answer the question of the Senator from Massachusetts so far as it is pointed out by way of application to my present argument in this way, that I deny utterly the power of Congress to declare that a debt not due is due, and to make the debtor pay it before it is payable.

Mr. HOAR. I think the Senator does not precisely understand the purpose or the extent of my question. I desired by putting the question, not to ask whether he meant to admit what he was just denying, but to see whether his argument went to the full length of denying that proposition. I suppose it to be true that a debt is due in the future and not in the present; and conceding that the obligation or burden of that debt cannot be affected, does the Senator deny that it is within the ordinary just power of Government, either under this clause reserving the power to alter, amend, or repeal the charter, or without it, to provide that that debt, payable in the future, shall be

(in the case of a corporation whose solvency in the future the Government has the right to require it to keep up and provide for,) shall be secured by the corporation setting apart a certain portion of its earnings in a safe place to provide in the future for the payment of the debt. Suppose, to use the illustration of the national banks, the charters of the national banks were contracts with the Government: would not the Government have a right to require that out of the net earnings of every national bank in this country there should be set apart a sinking fund, secured in the Treasury or elsewhere, which would secure the bill-holders against loss? That is this case exactly.

Mr. MATTHEWS. If in the original constitution of the bank the Government had agreed with it that its net earnings should not be required for such a purpose but might be devoted at the discretion of the bank to any other purpose, then I answer the Senator from Massachusetts emphatically in the negative, for the plain reason that neither the Government nor the other party to the contract has a right to break it.

Mr. HOAR. Now suppose, if I do not disturb the Senator——

Mr. MATTHEWS. He has not thus far. I do not know what the Senator may do if he keeps on; but I am not disturbed so far.

Mr. HOAR. I do not wish to trespass. Now suppose the contract was this: that a certain portion of the net earnings should be annually set aside and that the Government might amend, alter, or repeal that provision at its election, could it not, not increasing the burden of debt but simply changing the extent of the security for the ultimate payment of the debt, alter the proportion of the net earnings which it required to be set aside?

Mr. MATTHEWS. I shall show—which is more pertinent to the present discussion—before I get through that the Supreme Court of the United States, by a necessary implication if not in express terms, has decided the very question I am discussing in reference to the railroad companies in the very particular on which this discussion hinges, against the view of the Senator from Massachusetts.

I was going on to amplify, Mr. President, the view of the nature of this corporation as decided by the Supreme Court in the case from which I read the extract, the Railroad Company vs. Peniston, that it was a person in law, a corporate body, which had in the first place certain vital functions belonging to it as such, its existence and those rights which were necessarily incident to that existence as a corporation, the right to acquire property; but that over and above all these there were invested in this corporation, ingrafted into it, superimposed upon it, certain public characteristics, obligations to the public coupled with power to fulfill them, functions characteristic of these services, designations of certain channels in which it should operate, that in respect to these public purposes, so far as they were designated by the statute, the rights acquired under the statute belonged to it for those purposes, and that it had all the properties of a private person besides. In other words, the status and condition of this question before the Senate are not affected one whit by the fact that these parties are corporations.

Suppose they were natural persons, as they are only with a name; they are natural persons associated together. But suppose it was one single individual, natural person, who had entered into the compact in the acts of 1862 and 1864, whereby he had engaged to render certain public services to the Government in consideration of certain rights and privileges, and that in the exercise of them he had acquired

a certain estate and was in the possession of a certain income, and had committed no violation of the conditions of his existence, and was in no default in the performance of his duty; could it be claimed that, under any disguise of being in furtherance of justice or of the public interest or of purposes to be promoted by the original designation in the law of these characteristics, that individual, natural person could be stripped of his property and have it put into the hands of the Government or a trustee, to work it out in any other way that the Government chose to specify?

Suppose it were a mail contractor carrying the mail from Fort Worth to Fort Yuma or anywhere else across the plains, who had invested hundreds of thousands of dollars in stock and stage-coaches, under a written contract, with express stipulations defining his obligations and his rights, a contract for twenty years or for one hundred years, I care not, and Congress should come in and say "We suspect that at the end of a period of twenty years you may be dead or insolvent, or you may lose your faculty and power of performing the terms and stipulations of the contract, and now in advance we will require you to give additional and other security entirely beyond the original exaction in the contract; not only that, but we will take from you, from your possession, from your control, the very property which you have acquired for the purpose of enabling you to execute this contract, and as a matter of abundant caution we will put it into the hands of a receiver or a trustee, but we will let you go on and perform your work, use your property, but all your net earnings, with which you intended to replace the estate which you have invested in this enterprise, we will keep until the termination of the contract, to see whether or not you have performed it faithfully."

Mr. President, the identical thing which the Judiciary Committee of the Senate are asking Congress now to do—I mean identical in species—twice before the Congress of the United States has done and failed in. They have undertaken to exert this very power; they have undertaken to occupy this very jurisdiction; they have assumed this very control over these institutions under this power, this general power or else this specific power reserved in this reservation of the right to alter, amend, or repeal. Twice they have met the resistance of the companies. In one case the controversy has gone in its successive stages until it was decided by the Supreme Court of the United States against the claim of Congress, and the other case is pending there to-day on an appeal on the part of the Government from an adverse decision of one of the judges of that court. Let me recur to the latter case first. I refer to that litigation which sprang up under the special act in reference to the Credit Mobilier. I propose to read an extract from the opinion of Mr. Justice Hunt in the case of The United States *vs.* The Union Pacific Railroad Company and others. The report which I have is contained in the eighth volume of the American Law Review, page 360. In this case Mr. Justice Hunt says:

> The United States is the plaintiff in this suit, and the question arises, Is there a right of action in the United States for the causes thus specified, or can a right to recover for such cause of action be given to the United States by an act of Congress? Congress may well authorize its Attorney-General to institute suits to recover damages due to the United States, to redress wrongs which are legally wrongs to the United States; but its action can scarcely create such damages or cause acts to be wrongs to the United States which are, in their nature, wrongs to another. The United States cannot convert to itself the property of another by its own declaration or its own authority; nor can it maintain an action in its own name against A to recover a debt which he may owe to B. Moneys recovered by the United States in such an action, like its other funds, will go into its general Treasury, and from a part of its resources, to be disposed of according to law.

So if any individual has committed a breach of trust or been guilty of fraud in discharging his duties as an agent of the Union Pacific Railroad Company the cause of action to redress such wrong and to recover damages therefor, and the damages themselves when recovered, belong to the corporation. The suit for such redress must be in the name of the corporation as plaintiff. As a general rule and under ordinary circumstances, no other party can be such plaintiff; and an authority by Congress to the Attorney-General to commence such action in the name of the United States is valueless. Congress cannot thus appropriate to itself what belongs to another. To give effect to such an act would be to deprive one of his property without due process of law. I do not doubt the power of Congress over the remedy to redress alleged injuries; in other words, its power to regulate the conduct of suits or to prescribe the form of actions; but it cannot, under the form of regulating the remedy, impair contracts or dispose of rights of property. It cannot itself adjudge that moneys are due to the United States, and by such judgment give authority for their collection.—*United States* vs. *Union Pacific Railroad Company and others; American Law Review*, 1873-'74, volume 8, page 360.

The statute which was there declared by that judge to be unconstitutional was passed under just such an argument as that made for the passage of the present bill. It was done for the purpose of promoting the general purposes of the corporation, of securing the rights of the stockholders and the creditors, of advancing the public interests involved in the original creation of the corporation. It met with that rebuff. What better success it will have on the appeal, remains yet to be seen. But if the logical consequences of what the Supreme Court of the United States has already decided are to be consistently applied, there can be but one answer to the question, what will be the result there. And I now intend to show, if I can, as I believe that I can, from the decision of the Supreme Court of the United States as rendered by a very learned and distinguished justice then on the bench who the day before yesterday argued the other way, that the very exertion of authority proposed to this bill is illegal and void. I refer to the well-known case of the United States *vs.* The Union Pacific Company, in 1 Otto, page 72. I want first to call the attention of the Senate to the terms of the statute under which that suit was brought, the act of March 3, 1873. The second section of that statute provides—

That the Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation, over their respective roads, of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been reimbursed together with the 5 per cent. of net earnings due and unapplied as provided by law; and any such company may bring suit in the Court of Claims to recover the price of such freight and transportation; and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business.

Now, mark it, the claim is made that the Congress of the United States, either by virtue of a general principle or by virtue of a special specific reservation of power, had authority to compel the companies to pay into the hands of the Secretary of the Treasury money—money not due by the original acts of 1862 and 1864. By those acts only one-half of the amount accruing on account of Government transportation could be retained by the Government; but the gentlemen argue that the Government can require the companies to pay all, and that is what they do require by this bill, and that is what was required by this act of March 3, 1873, expressly, specifically. It was to be retained by the Secretary of the Treasury, the object being to apply it on account of the interest paid by the Government on its bonds advanced to the companies.

The argument was that the Congress of the United States had

authority to do that thing. It is argued here to-day; and a bill to require the companies to do that is pending here, not differing in principle, not differing in effect one whit from this act of March 3, 1873. That act required that the Secretary of the Treasury should withhold, not half as the original act contemplated, but all of the payments otherwise due on account of freight or transportation; and in order to test the question whether the Government had a right to do that thing the companies were authorized to institute this suit in the Court of Claims, and in the suit the very right of the matter was to be adjudged or the merits of every point upon the law and the facts, and this act of March 3, 1873, was part of the law of the case. That was litigated through the Court of Claims. That court adjudged against the claim of the Government. It was appealed to the Supreme Court of the United States. It was argued there on the grounds, first, that by the necessary meaning of the acts of 1862 and 1864 every time the Government made an advance on account of interest there arose an obligation on the part of the companies to repay it presently, and that it thereupon became a debt due *instanter*, and that being so the Government had, in the exercise of its ordinary right, to recoup and set off any amount coming from it to the other party, withhold payment, and so to that extent extinguish the corresponding obligation and debt on the other side.

Second, it was argued that if that right was not secured to the Government by the original acts of 1862 and 1864, yet because by those acts Congress had reserved to itself the right to alter, amend, or repeal those acts, and because by the act of March 3, 1873, it had modified them, it had amended them by conferring on the Secretary of the Treasury the express authority and power and given him in so many words the actual direction to withhold these payments, if not lawful before this withholding had thereby become lawful, and consequently the court must adjudge in favor of the Government.

The court at great length dispose of the first proposition by proving, from the circumstances of the time, the nature of the enterprise, and the language of the law, that it was not the intention on the part of Congress in the acts of 1862 and 1864 to create as against the corporations a debt for the repayment of the current interest until the maturity of the principal sum named in the bond; and then their answer to the argument of the Attorney-General on the other point was this; I read from page 91:

> Another act was subsequently passed by virtue of which this suit was instituted by the appellee, act of March 3, 1873, 17 statutes, 508, section 2. It is contended that this act repeals that portion of the charter of the company which contains the provisions we have discussed. But, manifestly, its purpose was very different. Although it directs the Secretary of the Treasury to withhold all payments to the companies on account of freights and transportation, it at the same time authorizes any company thus affected to bring suit in the Court of Claims for "such freight and transportation;" and in such suit "the right of such company to recover the same upon the law and the facts shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them." This means nothing more or less than the remission to the judicial tribunals of the question, whether this company, and others similarly situated, have the right to recover from the Government one-half of what they earned by transportation; and this question is to be determined upon its merits.
>
> The merits of such a question are determined when the effect of the charter is ascertained and declared. It is hardly necessary to say that it would have been idle to authorize a suit, had Congress intended to repeal the provision on which alone it could be maintained.—1 *Otto*, 91.

That is the answer, and the sole answer, made by the court to this argument of the Attorney-General. That is, in substance, that it does not appear that Congress in the passage of the act of March 3, 1873,

intended to amend or alter the provisions of the original acts of 1862 and 1864. But, Mr. President, what is the necessary implication? Whether Congress formed the express conception in its mind of making a formal amendment to the original charter contained in the acts of 1862 and 1864, it is absolutely certain that what Congress did in the act of 1873 was to make legal, as far as Congress by that act could make legal, the withholding, by the Secretary of the Treasury, of funds which under the original act would have belonged to the company.

Mr. HOAR. Will the Senator from Ohio allow me to make a statement? I drew the act of 1873 to which he refers, although I did not draw the particular clause which he is now discussing, which was put in by a Senate amendment, but I am very familiar with its history. Nothing is more certain than that Congress did not intend, as will appear from the debates, from the whole purpose of the committee that had the subject in charge, to affect in the least the rights of the Pacific Railroad Companies in reference to this question, whether they were bound to pay over the interest promptly or at the end of the thirty years; but on the contrary the provision of the act of March, 1873, was a simple mode of raising the question. The Secretary of the Treasury had been by the previous act of 1871 ordered to pay this over, yielding to the companies' construction. It was claimed that that act had been obtained by improper practices on the part of the Pacific railroad companies, and this clause was simply a mode of raising the question. It said to the Secretary, "Do not you pay; but a suit may be brought by the companies in the Court of Claims, with the power of appeal to the Supreme Court of the United States, by which the question can be raised;" and that, if I understand the decision given by the Senator from Illinois, [Mr. DAVIS,] was the interpretation which the Supreme Court put upon the act: that it did not attempt to assert any power in Congress over the matter one way or the other, but it merely provided a method of raising the question.

Mr. MATTHEWS. Mr. President, I am arguing this case on the face and the terms of the law and the decision of the Supreme Court made under the law, and not upon the secret purposes and the private intentions of any member of Congress who at the time had a hand in framing its provisions. Neither is the gentleman at liberty, I will remind him, for the purpose of settling a judicial question, a question of the construction of a law after it is passed for the purpose of determining private or public rights, to refer to the opinions of those who took part in the debates on its passage. I assert that, whatever Congress intended to do outside of the act itself, the act of March 3, 1873, was an exercise of power and authority on its part, and the legal consequences of that are to follow from it by the logic of the law, no matter what it professed or what it intended.

Mr. HOAR. Does not the Senator from Ohio understand that the Supreme Court decided that the act itself did not constitute an exercise of power, but merely a method of raising the question, and that the Supreme Court construed the act directly opposite from the construction he puts upon it?

Mr. MATTHEWS. I have read to the Senate all that the Supreme Court of the United States said on that question, and every Senator is as competent to make his inferences and draw his deductions as to what the meaning of that tribunal is as myself. I am arguing from the law and from the decision. Here was a statute, an act of Congress, making it lawful for the Secretary of the Treasury to withhold certain money from these corporations. It was claimed, to be sure, that

under the prior law as it stood at the time of this enactment, it was his right and his duty to do that same thing. But whether that was so or not, and whether with the intent, certainly with the effect of removing any doubt upon that point, Congress said in express terms to the Secretary of the Treasury "You shall withhold this money." Now, then, did that make it lawful for the Secretary of the Treasury to withhold it? If Congress had power to order him to do it, then it was lawful; otherwise, not.

Mr. THURMAN. Will my colleague allow me?

Mr. MATTHEWS. Certainly.

Mr. THURMAN. Is it not perfectly plain to him that the withholding of that money by the act of 1873 was simply to enable a case to be made, in order to determine what was the meaning of the acts of 1862 and 1864? I do not wish to take up the time of my colleague if it is disagreeable to him.

Mr. MATTHEWS. On the contrary, the interruption is quite agreeable, for it gives me an opportunity of reposing.

Mr. THURMAN. The history of this business is this: The Attorney-General, Mr. Ackerman, insisted that the Government had a right to retain the half-transportation account, other than that half-transportation account which is expressly payable to the Government as an offset against the amount of interest which the Government paid for these companies semi-annually. They came to Congress; they petitioned Congress that that money might be paid to them, denying this opinion of the Attorney-General. The Judiciary Committee of the Senate, and the Judiciary Committee of the House, considered that question; and the Judiciary Committee of the Senate, with but one dissenting voice, held that under the law as it then stood, the act of 1862 as amended by the act of 1864, the Government was bound to pay the half-transportation account to the companies, and that the Government could not retain it as an offset against the interest paid by the Government.

That was their view upon the statutes as they stood. The House Committee on the Judiciary made a similar report, and the consequence was that the act of 1871 was passed directing that half-transportation account to be paid to the companies. Some dissatisfaction arose; a good deal of feeling in fact sprang up. My then colleague, now the Secretary of the Treasury, strongly combated the conclusion at which these two judiciary committees had arrived. The chairman of the Judiciary Committee of the Senate also dissented from that opinion. There was dissent in the House. The result was that, in order to raise the question whether or not the acts of 1862 and 1864 had been interpreted correctly, the act of 1873 was introduced and passed; and the whole effect of that act was simply a declaration of Congress that, in order to make a case, the Secretary of the Treasury should withhold this money; the companies could sue for it; and then the courts should decide according to the acts of 1862 and 1864, and if they decided that under those acts the Government had no right to withhold this money, then it would be paid. There never was the slightest idea that the act of 1873 was an exercise of the power to alter, amend, or repeal the charter, and the Supreme Court expressly so decided in this very case.

Mr. HOAR. Will the Senator from Ohio read the last sentence?

Mr. THURMAN. The court say:

> Another act was subsequently passed by virtue of which this suit was instituted by the appellee, act of March 3, 1873, 17 statutes, 508, section 2. It is contended that this act repeals that portion of the charter of the company which contains the provisions we have discussed. But, manifestly, its purpose was very different.

That is, it was not intended as a repeal.

Although it directs the Secretary of the Treasury to withhold all payments to the companies on account of freights and transportation, it at the same time authorizes any company thus affected to bring suit in the Court of Claims for "such freight and transportation;" and in such suit "the right of such company to recover the same upon the law and the facts shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them." This means nothing more or less than the remission to the judicial tribunals of the question whether this company, and others similarly situated, have the right to recover from the Government one-half of what they earned by transportation; and this question is to be determined upon its merits.

That is, it is to be determined upon the law as it stood before that act was passed.

Mr. MATTHEWS. Mr. President, I am not at all responsible for the private reasons or the assigned reasons which actuated any member of Congress at that time in voting for the act of March 3, 1873. Neither was I unmindful of the terms in which the Supreme Court of the United States in the opinion I have referred to disposed of the argument raised by the Attorney-General upon that statute, for I read the whole of what was said by the court upon that point. What I assert, what I maintain, what I insist upon, is that if the reason of the Senator from Ohio, my distinguished colleague, and of the distinguished Senator from Illinois [Mr. DAVIS] in support of the bill from the Judiciary Committee is right, then the necessary implication from this decision of the Supreme Court makes it an adverse authority against them, for whatever were the unexpressed and unassigned purposes of Congress here was an act of Congress which was a law, and if it was a legitimate exercise of legislative power whatever it expressly authorized was legal and not illegal. Can that proposition be denied? The Supreme Court of the United States solemnly and not inadvertently decided two propositions; one was that the money did belong to the corporation and that it was not lawful for the Secretary of the Treasury to withhold it. How could they decide that without deciding that it was not competent for Congress to make it lawful for the Secretary of the Treasury to withhold the money?

It is not essential to an amendatory law that it should express that it is by way of amendment. In a case which I have very well reason to remember and to know, in the case of the State of Ohio on the relation of some one against the Cincinnati Gas-Light and Coke Company, reported I think in the eighteenth volume of Ohio State Reports, there was a special charter granted years and years ago to that corporation with the clause giving to the Legislature of Ohio the right to alter, amend, or repeal. Subsequently a general act was passed not referring to this charter at all, but conferring upon municipal authorities in which gas-light and coke companies were in existence the right to regulate the price of gas. It was held against argument that that general law could not be construed as an amendment to the charter that it nevertheless operated to have that effect. So here one of two things it seems to me is clear enough from the face of this statute of March 3, 1873, either Congress intended to change the terms of the acts of 1862 and 1864 or else they intended to put upon those statutes a construction; and if they had power to alter, amend, or repeal, then they had power to put an interpretation and construction on these statutes which would be conclusive as matter of law. So that the *ratio decidendi* of this case rests necessarily upon the postulate that in the particular named, to wit, the conferring upon the Secretary of the Treasury the authority and right to with-

hold the moneys of this corporation belonging to it by virtue of the acts of 1862 and 1864, was an unlawful exercise of authority. What are the terms in which this power is reserved? The eighteenth section of the act of 1862 in the sentence in which the reservation occurs provides as follows:

> And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

It is said that all those words in that long sentence except the final five are without meaning, are empty and void; that it is as if they were not, and had not been used, that they are surplusage, verbiage, purposeless, without legal significance, operating neither as restraints nor conditions; and yet in the same breath it is argued that the naked words used in the act of 1864 enlarged the power. The twenty-second section, being the final section of the act of 1864, is:

> That Congress may at any time alter, amend, or repeal this act.

Mr. President, I respectfully submit that according to the plain, obvious, and popular meaning of these terms, as used in the eighteenth section of the act of 1862, it was not contemplated by Congress to give notice to the private persons who were expected to invest capital in this enterprise that they held whatever they chose to invest in it at the caprice of any future National Legislature, but it was simply intended to say that this property and all the money put into it shall be dedicated forever to the uses and purposes named in the statute, and that as long as they were held faithfully to those uses, as long as they were successfully devoted to those purposes Congress would do nothing to impair the investment as to its value or weaken it as to its title; and that whatever else it might do to improve it, to enlarge it, to increase it, to render it more valuable and effective, it might do; but nothing outside of and beyond the preservation of the investment for the great public purposes for which it was created; that in all it should attempt it would never disregard the rights even of the corporations themselves.

As stated by the Supreme Court in the decision in 1 Otto, and as repeated by the learned Senator from Illinois the other day, it was found that even the liberal provisions of the act of 1862 were found not to be sufficient. As much as Congress had done and as much as Congress had promised to do under that statute still they had neither done nor promised enough, and so the act of 1864 was passed releasing rights of the Government as defined under the act of 1862 and enlarging the privileges of the corporation. It is said, and in that I agree, that the twenty-second section of the act of 1864, which contains the naked reservation of the right of alteration, amendment, or repeal, is to be construed in conjunction with and not separately from a similar reservation of the act of 1862; because the two statutes being *in pari materia*, relating to the same subject, must be construed as if they were the same act. That being so, the effect necessarily is to attach to the naked power in the twenty-second section of the act of 1864 the conditions and qualifications of the eighteenth section of the act of 1862; for, by that means, bringing them together in the same company, in the same statute, being powers of the same kind, the description of that power which is contained in the original act is made to apply to that power which is more summarily described in the act of 1864, intended only to amend it. Look at the provisions

of the act, look at the nature of the statute, and let us see what to a mind of ordinary comprehension would be the irresistible inference as to its meaning. It is argued as if this conferred upon Congress the absolute power to change the terms on which this corporation held its rights.

Some of them are in their very nature irrepealable or else contain limitations in the grant which are inconsistent with the existence of this unconditional right in Congress. For instance, in the very eighteenth section of the act of 1862, in which is the reservation of the right to amend. Of course that is a reservation also on the part of the company:

> That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs and the furnishing, running, and managing of said road, shall exceed 10 per cent. upon its cost, exclusive of the 5 per cent. to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law.

I ask the Judiciary Committee whether, before the event has happened on which the right in Congress to make that reduction has arisen, Congress may, nevertheless, reduce it. If their argument is good for anything, it is good for that, and Congress need not wait until the net earnings of this company have arrived at the limit fixed in this grant to interpose to get them down to any amount reasonable or unreasonable that they may see fit in their discretion to establish; and yet is it possible that men have gone on under that possible construction of their rights, and Congress has gone on under that actual interpretation of its power, when it was so easy to wipe it all out, to blot out every condition, every restraint, every qualification, by a simple fiat of Congress. If they cannot reduce the rates until the time arrives and the event has happened which constitute the contingency on which expressly Congress alone reserved the right of interfering, by what authority can they take those net earnings, thus so sedulously devoted to the private and particular uses of the corporation as its own property, and impound them in the Treasury of the United States for the benefit of the creditors of the corporations? Does the greater include the less? If it does not, then the power of repeal as claimed exists; but if it does then that express declaration of a limit in that particular dissipates the entire fabric of the argument reared on the other side.

This bill goes on to define what net earnings shall be, and puts a construction on that act, although they have no more right to do that than they have to confiscate them all, for you can just as easily confiscate them by a definition as you can by an open robbery. You can say that the net earnings shall be all that is left after Congress has helped itself.

That makes it so because Congress declares it so. But in the vital point of possible profit on the private capital to be invested upon this congressional invitation that they shall be allowed a compensation for its risk and its use to earn enough in addition to the 5 per cent. to be given to the Government to put 10 per cent. into their own pockets, the Judiciary Committee comes forward now and says: "We will take 25 per cent. out for ourselves unless perchance the 75 per cent. remaining should not be sufficient to pay the interest on your other debts; and if you can establish to the satisfaction of the Secretary of the Treasury for the time being that the 75 per cent. of the net earnings after we have defined them and taken 25 per cent. away will not enable you to operate your roads and pay the interest on

your other debts, then we will reduce our exactions so that the balance which may remain to you shall be exactly nothing." That, in the face of a statutory declaration co-existent with this alleged right of repeal, standing side by side with it, ay, having precedence over it, being the first clause of the section itself, subordinate to which, and subject to which the right of repeal is added on! There is the high authority and guarantee of the Congress of the United States that in spite of whatever else there is or may be in that statute or any act made by way of amendment the fixed and irreversible pledge to every private capitalist that he shall be allowed to operate this road until he may be able out of these net earnings to receive for his own individual use 10 per cent. net on his money. Under the guise of patriotic duty and a sensitive regard for the public interest, this right, as sacred as law itself, is struck down in the very stronghold of law itself. I will venture to say, without having been a careful student of the debates in Congress at that time, but only from a general knowledge and recollection of the character of the circumstances that surrounded this legislation and what has been done under it, that the idea that the Congress of the United States either had the right or would ever seek to exert it to modify the terms and conditions on which alone this investment could ever have been made, never entered the minds or hearts of the men who conceived and passed it. It is an after-thought. It is conceived by those who have forgotten apparently and temporarily the exigencies of the occasion, and who at least, I most respectfully submit but most earnestly protest, are oblivious, for the time being only I trust, of the essential principle on which every right of property or person, private or corporate, must rest for its integrity.

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MARCH 18, 1878.

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THE PACIFIC RAILROADS.

Mr. THURMAN. I move that all prior orders be postponed and that the Senate proceed to the consideration of the sinking-fund bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. GORDON. I ask indulgence of my friend from Michigan for one moment, if it is agreeable to him, in order that I may have a bill passed removing disabilities.

Mr. CHRISTIANCY. I would very gladly do so, but I have already lost one hour, and I think I should not be asked to yield further.

The VICE-PRESIDENT. The Senator from Michigan is entitled to the floor.

Mr. CHRISTIANCY. Mr. President, the report of the Committee on Railroads accompanying their bill waives the question of power to require these railroad companies to establish a sinking fund for secur-

of the act, look at the nature of the statute, and let us see what to a mind of ordinary comprehension would be the irresistible inference as to its meaning. It is argued as if this conferred upon Congress the absolute power to change the terms on which this corporation held its rights.

Some of them are in their very nature irrepealable or else contain limitations in the grant which are inconsistent with the existence of this unconditional right in Congress. For instance, in the very eighteenth section of the act of 1862, in which is the reservation of the right to amend. Of course that is a reservation also on the part of the company:

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Mr. CHRISTIANCY. I would very gladly do so, but I have already lost one hour, and I think I should not be asked to yield further.

The VICE-PRESIDENT. The Senator from Michigan is entitled to the floor.

Mr. CHRISTIANCY. Mr. President, the report of the Committee on Railroads accompanying their bill waives the question of power to require these railroad companies to establish a sinking fund for secur-

ing the payment to the United States of the bonds loaned to the companies: but goes upon the assumption, that the companies ought, in justice and fairness, to establish such sinking fund, though not required under the acts of 1862 and 1864 under which the bonds were issued, to do so. It professes to put the case upon the broad ground of justice and fairness to the companies and the United States. And, though it requires the assent of the companies in order to bind them, the report goes upon the assumption that the bill which they report will accomplish the object of security to the Government, and, of course, claims that the bill, if passed, will make the condition of the Government in respect to these companies and the repayment of the loan, more secure than it would be, if the rights of the parties were left to stand upon the law as it now is. Now, without going into details, let us see how this profession of bettering the condition of the Government in respect to security for repayment has been carried out by the bill which they have reported. The first and second sections provide for the payment by each of the two companies into a sinking fund, in the Treasury, of $1,000,000 annually, which shall draw interest to be credited to the company at 6 per cent. per year, compounded semi-annually; to continue to the year 1900, when the whole fund, principal and interest, is to be credited to the companies respectively, and deducted from the whole sum of principal and interest then due upon the bonds of the Government, loaned to the companies. And that the balance then due to the Government, which will be about $26,000,000 from each company, shall be paid in fifty equal semi-annual installments, with no sinking fund to secure such payments.

Now, by the present law the companies are bound to pay 5 per cent. net earnings and the half of the Government transportation, which amounts to about one-half of the whole sum which this bill proposes the companies shall pay. And this under the present law would be applied at once to stop interest on the debt to the Government. All this this bill gives up, and requires the whole sum which is to be paid by the companies to go into the sinking fund, on which the Government is to allow the companies interest at 6 per cent. compounded semi-annually. It cannot be disputed that this is liberal: but to whom?

Bearing in mind that the act is not to take effect, unless assented to by the companies, and only as to the company assenting, let us see what is the right secured to the Government for a breach of these undertakings after the companies shall have assented to the act. What are the penalties or the new rights to be given to the United States, in case the companies fail to make the specified payments? Why, Mr. President, the sagacity of the able men upon the Railroad Committee must have been exerted to the utmost, and their skill exhausted in contriving the formidable penalties upon the companies for the breach of their new contract: and you, Mr. President, and the whole country will stand aghast at the severity, the absolute cruelty to the companies and the extreme solicitude shown to secure the Government in all cases against the violation by the companies of the requirement to make these payments. Let us see what these tremendous penalties are. One feels almost as if it would take his breath away to state them. They are these: and, that if they should fail to make their payments into the sinking fund, with six per cent. after any of them shall become due, then all the provisions requiring such payment from the companies shall thereupon, at the option of the United States, become inoperative as to such defaulting company,

Did any one ever hear of such shocking cruelty as this to railroad companies before?

Only think of it, Mr. President: if the railroad company shall fail to perform this requirement of the act which, by its own assent, it agreed to perform, then that requirement upon such company shall cease—with nothing under heaven to save this company from this dire calamity, except the mere option of the United States to leave the requirement in force. It is really to be hoped that the United States may be merciful in such a contingency, and elect to let the obligations of the company stand. I know of but one case exactly in point, which is so pertinent that the Senator from Ohio ought to have cited it in the margin of this provision. It is the charge given by the erudite English judge, Dogberry, to the watch:

> You shall comprehend all vagrom men; you are to bid any man stand in the prince's name.
>
> *Second Watch.* How if he will not stand?
>
> *Dogberry.* Why, then take no note of him, but let him go; and presently call the rest of the watch together, and thank God you are rid of a knave.

[Laughter.]

But, to go on with this bill—after the provision just cited, it does further provide, in case the United States should elect to treat the provisions for payment by the company as inoperative, that the rights and powers of the United States, in relation to said bonds (under the acts of 1862 and 1864) shall be in full force and effect as if this act had not been passed." Not quite, Mr. President. If it stopped there the United States would be just as well off, so far as this one provision is concerned, as they would have been before the act. But the committee do not seem to have been willing that the Government should stand in quite so good a position in this regard as before the passage of the act, though the companies should fail to perform; and they, therefore, add, "except as hereinafter provided." And the provisions thereinafter contained, among other things, take away the security we now hold in our unlimited power of alteration, amendment or repeal. The bill also provides that, in case of default aforesaid, the one-half of the transportation done for the United States (which under the present law would be due the company) may be retained by the Government to the credit of the sinking fund; but to balance this, it relieves them from the 5 per cent. net earnings payable to the Government under existing law. The fourth section which provides that the Government may hold and enforce its second-mortgage security, as a security for the obligations of the company under this act, is no security for the payment by the company to the sinking fund: as that mortgage does not become due and could not be enforced until the maturity of the bonds. It is easy to see and is plain from what I have already shown, that, if this bill be passed and the companies accept its terms, the Government is in a much worse condition than it would be without the act under the present law; unless the company should voluntarily, and without any legal obligation to compel them, choose to carry out its provisions. But this will appear more clearly a little further on.

The fifth section gives the companies four months from the passage of the act to file their acceptance. This will take the matter over to another session of Congress. But suppose the companies do *not* accept—and certainly if the argument of the Senator from Ohio [Mr. MATTHEWS] is correct, as to the question of power, that the companies cannot be bound without their assent, and the companies believe such to be the law, they will never assent to the act, unless they can

plainly see that the act would be better for them than the present law—suppose, I say, the companies do not accept. What then? Why then we shall stand next year just as we stand to-day, and just as far from any provision for a sinking fund, which even the Railroad Committee concede ought to be established, and so on from session to session. The Government, according to the Senator's argument, is powerless to require the companies to establish a sinking fund without their assent to the act. And this assent, if they believe such to be the law, they will never give to any act which they do not believe to be better for them than the law as it now is, and which does not require it.

But now, Mr. President, I, for one, do not believe the Government is quite so infirm as this argument would make it. And I am satisfied the companies believe no such thing. I saw enough at the last session, and have seen enough here at this, to satisfy me, that, to get rid of the power of Congress to alter, amend or repeal the acts of 1862 and 1864, the companies would gladly assent to this bill, and that they could well afford to pay many millions of dollars for such an act as this; not that they expect to have to pay any such sum; as a large part of the newspaper press, the manufacturers of public opinion, in these hard times, are willing to advocate this or any other measure, just now, at very reduced rates, and, Mr. President, these companies are not behind the rest of mankind in the art of "putting things where they will do the most good."

It being admitted on all hands that it is desirable that these companies should establish a sinking fund for securing the Government; if the power were not disputed, the only question would be what amount the companies could, with a view to the proper operation of the road and a reasonable income to the stockholders, and without too much crippling themselves, afford to pay, and what sum the Government, having in view the just rights of the companies, and the public interests to be subserved by this great enterprise, ought to require the companies to pay. And these are the principles upon which the Judiciary Committee sought to proceed, in the report they have made, and the bill they have presented. These are also the principles upon which the Railroad Committee profess to have proceeded in their report. They waive the question of power. Aside, therefore, from the question of power, and the differences growing out of that question, the main differences ought to be upon the sum required to be paid into the sinking fund, and the rate of interest the Government should account for upon that sum.

But, though the report of the Railroad Committee waives the question of power, the Senator from Ohio, whom I take to be the author of that report and of their bill, now denies the existence of the power to require these companies to establish such a sinking fund. And he has made a very adroit argument, so far as it goes, in support of that view of the law. He had evidently examined with care and industry all the authorities upon that question which he thought would be likely to sustain his position, and with equal care and industry avoided all those which would be likely to weaken that position, among which are those which are conclusive of the question and of paramount authority against his position. I reply to his argument under great disadvantages, both of health and opportunity for examination. Other duties spared me but a part of the two days which have intervened, yet I do not despair of being able to show that my friend from Ohio is wrong both upon principle and authority. The question is not wholly new to me, having, without the examination of authorities,

gone over the same question here one year ago, and laid down what I then deemed the true principles, which were then as strenuously opposed by others in behalf of the companies as they have been now by the Senator from Ohio. And yet, within a few days after those arguments, without my knowing that any such questions were pending before the Supreme Court, that court decided several cases in which they went further in sustaining the powers for which I had contended, than I found it necessary to go in support of the bill, then before the Senate, which raised the same question of power that arises upon this bill of the Judiciary Committee.

The question of power, Mr. President, is *one* thing, while the questions, whether it is judicious to exercise the power, or, if so, how it shall be exercised, are distinct and totally different things. The Senator from Ohio the other day, like many other opponents of the power in former debates upon this question here, very adroitly confounded all these questions together: and, worse than that, he has, like some of his predecessors in this debate at the last session, assumed, that, if the power exists, it will of necessity be arbitrarily and capriciously exercised, to the destruction of the rights of the company. He even waxed into eloquence when he asked, if those who had invested their money in this enterprise could have supposed that they were intrusting all their rights to the "*caprice*" of a majority of Congress; thus taking it for granted, that, if Congress had the power, it must be exercised capriciously and unjustly.

Mr. President, a very little cool consideration, a very economical exercise of his own strong common sense, would have spared him this burst of oratory, at the expense of his logic; and would have taught him that he was reversing the presumption of law, a presumption upon which all legislative power in this and all other governments is founded: the presumption that the legislature will act wisely, with due regard to the rights of all; without which presumption all legislative power would be unjustifiable usurpation.

He would have seen that to argue, that the power could not exist, because it was liable to abuse, was proving vastly too much, or proving nothing. Because he knows and all men know, that no human power, however expressly given by the Constitution, or however undisputed, ever did or could exist without liability to abuse; and hence, if his logic is sound, no legislative power could exist, because all such power is liable to abuse; he would have seen that the presumption that the legislature would generally act with a proper regard to the rights of all, though liable occasionally, honestly to err, was the very basis upon which our Government was established: that whatever exhibitions of oratory he might indulge in against what he seemed to think the absurdity of making the rights of the companies depend upon the will of a majority of Congress; yet almost all the rights secured by the Federal Government rest and depend mainly upon a majority of Congress: that, whatever may be the power conferred upon Congress, Congress must be the sole judge of the propriety and the manner of its exercise, unless specially restrained by some provision of the Constitution; that the provision against impairing the obligations of contracts, is only a prohibition to the States and not upon Congress; and that the power of Congress upon any question of the kind now before us, is restricted only by that provision of the fifth amendment, against depriving any person of his property "without due process of law;" and finally he would have seen that, if Congress has the power to amend, which is claimed by the Judiciary Committee, the companies will have the same security against caprice, tyranny

and abuse, that any other person would have whose rights depend upon the protection of laws enacted by Congress; and that that protection is to be found in the common sense and common honesty, in short, the sound discretion of Congress, which must be presumed to be fairly and wisely exercised for the equal protection of all, until my friend from Ohio or some one else shall procure a commission *de lunatico inquirendo*, and judicially establish the fact, that Congress, as a body, has become insane, and can no longer be trusted with the management of its own affairs, or the exercise of its own power, without submitting to the guardianship and guidance of these corporations.

And now, Mr. President, having cleared away some of the rubbish under which the ingenuity of my friend, the Senator from Ohio, contrived to conceal or obscure the real question of power, I will proceed to state what I conceive to be the true grounds upon which the power of amendment, sought to be exercised by the bill from the Judiciary Committee, rests. And here, for the purposes of the argument and to avoid unnecessary questions, I shall concede that, but for the power reserved in the acts of 1862 and 1864, or rather by the latter act, we could not exercise this power as the judiciary bill proposes to do. I mean simply to waive the question whether Congress could, without such reservation, exercise the power of adopting the proposed amendments: leaving to others to argue, if they choose, the question of power in the absence of such reservation. This is, in my view, a barren abstraction, as applied to this case: because here, as I contend, the power is expressly reserved. I shall concede also that the act of 1862, as amended by the act of 1864, constitutes a contract between the Government, on the one side, and each of these companies, on the other, though not a contract coming within the prohibition against impairing the obligations of contracts, which only applies to the States, and was the basis of decision in the Dartmouth College case, the fruitful mother of a long list of such decisions.

But I shall not, as the Senator from Ohio [Mr. MATTHEWS] did, ignore any one of the terms of that contract, and more especially the very fundamental stipulation of that contract, upon which every other stipulation rests and by which all the others are qualified, and without which no man is authorized to say that the other stipulations would ever have formed a place in the contract. And I shall not, as the Senator from Ohio felt himself bound to do, argue this question of power as if that fundamental stipulation were stricken out: or, what is the same thing, that it is without any substantial effect upon the question of power here.

Let us see now what are the express reservations of power to alter, amend or repeal. That in the act of 1862 I shall spend no time upon, though I agree with the opinion expressed here by the Senator from Illinois, [Mr. DAVIS,] late an honored member of the Supreme Court, that the power, even in that act, is ample for this case, if there were no other. I agree also with the report of the Judiciary Committee of 1876 upon the same act, which as it bears upon this point, I intended to read, but shall omit for want of time. (See pages 9 and 10, THURMAN'S report, March 4, 1878.)

But I spend no time upon the provisions of the act of 1862; because if, as is contended on the other side, this act gives but a restricted power of amendment or repeal, that in the act of 1864, which is in these words, "that Congress may at any time alter, amend or repeal this act" is very clearly as broad and unlimited as human language can make it. And this act being, from its title as well as its provisions, an amendment of the act of 1862, and the two together,

after eliminating from that of 1862 such provisions as are repealed by provisions of the later act inconsistent with or repugnant thereto, constitute but one act: and the words in the act of 1864 "May alter, amend or repeal *this act*" are applicable to the two acts which, after the amendment, constitute but one act. And very clearly, according to well-settled principles of construction, if the power to alter, amend or repeal, in the act of 1862, was a restricted power, then, the *un*restricted power in the later act, covering the entire ground of the same subject-matter in the limited provision of the act of 1862, and even more, must repeal that limited provision; because being the later provision on the same subject it repeals it to the full extent of the difference. It is the last declaration of the legislative will upon that whole subject; and would operate as a repeal to this extent from the time of its adoption, whether declared to be an amendment or not.

This view is confirmed by the history of the whole transaction. Little or nothing was done under the act of 1862—a mere organization and perhaps some capital stock subscribed: But capitalists would not, or professed that they would not, go on with the enterprise without more liberal provisions. They appealed to Congress to grant more liberal provisions. And, though the first act was much more liberal than any Congress would be likely to grant to-day: yet to hasten the completion of the enterprise, they doubled the grant of lands, and, to the astonishment of the nation, consented to take a second mortgage, instead of a first for all the millions loaned to the companies; they also allowed the companies pay for one-half the transportation for the Government all of which, by the former act, was to go to the Government. But in granting these additional and extraordinary privileges, Congress, in effect, by the unrestricted power of amendments and repeal which they saw fit to require as a security to the Government, said to the companies, "You can have these additional and unprecedented powers and privileges, only upon the condition, as a part of the contract, that you will hold them always subject to such future alteration and amendment of the contract as Congress may, for the public interest, at any time see fit to make."

Doubtless the companies might have rejected the benefits of this amendatory law, by refusing to accept or act under its provisions, or to claim any right under it. But they could not take the benefits conferred by it, without accepting the burdens or conditions in consideration of which those rights and benefits were granted. They did accept the benefits conferred by the amendatory acts; and they must, therefore, be held to have accepted this reservation of power, as the fundamental condition of all the stipulations of the contract: the condition without which the act could not have been passed.

By thus accepting and taking the benefits of the act or contract, they assented, *in advance*, to any such alterations in such contract as Congress, in its discretion, should think it just to make. And it is quite unnecessary to the validity of such alterations that the companies should consent again. If the first consent does not bind them, the second will not; for both rest upon the same principle. And there is not the slightest hardship nor the slightest danger in thus holding their rights and their capital subject to the sound discretion and sense of justice of Congress; unless we are to presume, as the Senator from Ohio has, that Congress is an assemblage of knaves, of idiots or lunatics, seeking to do wrong and unwilling to do right. Why, Mr. President, the whole capital invested in these railroads, their entire value with all their appurtenances, is not one tithe, not

one-twentieth part of the amount invested by other citizens of the United States, depending solely upon the like discretion and sense of justice of Congress: Take your tariff laws alone, without mentioning any other case, and here are not only hundreds but thousands of millions of dollars invested in reliance only upon the justice and good sense of Congress. Ay, and even dependent upon a mere majority—a majority of one, it may be, in each House. But does any one see any absurdity in all this, or deny the power of Congress to alter the tariff laws? This is but a single example among hundreds that might be mentioned.

Why, Mr. President, to give the Senator from Ohio all the advantage he can ask, I will take the very example by which he seems to have thought he had demonstrated the absurdity of the power of amendment claimed by the Judiciary Committee in their bill.

Aside he says, from the mere matter of giving a corporate name and the right of succession &c., corporations are to be treated just as individuals are to be treated, and have the same rights. He is not quite right in that assertion: for if I remember correctly, corporations have just such rights and no other as are given to them by their charters or by statute, while individuals have all the rights given to them by their Maker, which in my opinion are considerably more numerous. Nevertheless, I will take the proposition as he states it. I will concede for the purpose of this argument all that he asks upon that question.

Could the contract of an individual, he asks, be thus amended against his consent? He instanced the case of a mail contractor. Here, I will take that case, as he seems to like that as well as any, and I venture to assert, without the slightest qualification, that upon any sound principle of law, if Congress should authorize the Postmaster-General to enter into contracts or should enter into such contract itself, reserving to Congress, in the contract itself, the right to alter or amend that contract without reservation; Congress would have the complete right to do so to the full extent that we propose to amend this; and might require security of the contractor though none was required in his contract, as first made.

I have not the slightest doubt of it.

Mr. THURMAN. Provisions similar to that, it has been customary to insert in mail contracts to the effect that the Postmaster-General might do that.

Mr. CHRISTIANCY. But all at once it has become very absurd when we propose to apply the same rule to a corporation which holds its existence by legislative action.

I come now to notice more especially the nature, effect and extent of this power of alteration, amendment or repeal. The language is "Congress may, at any time, alter, amend or repeal this act." No words could be more absolute and unrestricted. It is not confined to the case of the failure of the company to perform any of the requirements of the act, as in several cases which have been before the courts: but is absolutely unlimited, if human language can make it so. And, as it is not permissible, upon any principle of construction of contracts or statutes, to hold that this plain provision was inserted without *any purpose*, we must hold that it was inserted to mean something, and to have *some* effect; and that, if intended to be restricted or qualified in its meaning and effect, the language chosen for the purpose of expressing such a meaning would have expressed such qualifications. But as there is no such qualification or restriction, and no uncertainty or ambiguity, we must hold that it means just what and all it says.

We must hold that it means this or it means nothing; for there is no intermediate ground.

But it is frequently urged by the advocates of these companies, it was so urged before our committee by their counsel, and by their friends in the Senate a year ago, and something like the same argument was made the other day by the Senator from Ohio [Mr. MATTHEWS] that these acts of 1862 and 1864 constitute a contract; and they ask with an air of confidence, "Do you contend that Congress can, under this power, alter the contract in any material respect?" We admit, say some of them, that Congress may amend the acts in any manner so as not to alter the contract in any way which would render it less advantageous to the company. We admit, say others, that you may alter the contract as to some minor incidents, or as to the provisions which contain no positive stipulations in favor of the companies; but where any right has been specially and expressly given to the company, you cannot alter that; though you might put in some provisions not there before, provided they are not prejudicial to the company. When a certain sum has been agreed to be paid in a certain time, you cannot, they say, require them to pay it sooner, nor to give any security for its payment, when none was required before, nor to establish a sinking fund which the former acts, constituting the contract, did not require.

Now, Mr. President, in reply to all this I say that, if the acts of 1862 and 1864 constitute a contract, which I do not deny, then every provision, every word of those acts, constitutes a part of that contract: and you cannot admit the power of altering, by amendment, a single provision or even a single significant word of these acts, without admitting the power of changing any other word or provision constituting part of that contract. I should like to see any man find any line between the two, other than that which I shall presently lay down. The argument that you cannot alter any part of the contract deprives the provision for amendment or repeal of all possible effect, and renders it nugatory, nonsensical and even absurd.

If it be said that some effect might be given to the power by allowing amendments granting benefits to the companies, but not to their prejudice, then I reply, that this could be done just as well without the reservation of this power as with it. And, if you say any effect can be given to the provision by an amendment which is only to be binding when they assent to it, my reply is the same: you could do this just as well without this reservation of power.

No, Mr. President, reasoning upon principle and the nature and object of this reservation of power, there is no escape from the conclusion that, as a naked question of power, every provision of these acts constituting the contract in which the power is reserved, is, as between the companies and the Government, subject to be altered or amended as Congress, with a due regard to the public interests, and the interests, rights and equities of the companies, may think just and right to alter or amend them: subject only to the qualifications that rights vested, as I shall presently further explain, cannot be divested by such a repeal. That ground I hope will be broad enough and lay me sufficiently open to attack, if any one chooses to make it.

To admit that the power is valid, at all, to authorize an amendment, as to certain provisions of the contract, and not as to others, or to a certain extent only, or as to any rights of the company resting for their support upon that contract only, and not so far vested as not to need the support of that contract—is to attempt to establish a distinction and a limitation where none exists, or, in the nature of

things, can exist. It is, to use the simile once used by Webster, to take the plunge of Niagara and attempt to stop half way down. There is no stopping place, no foothold, nothing but thin air and blinding spray to sustain you: nothing but rapids, whirlpools and bewildering eddies on the way, at any point of the descent, till you reach the level of the lake below, the level of legislative power. But, fortunately, the waters are as safe and calm below as above. The navigation is just as safe in Ontario as in Erie: nor are the people on the borders or upon the bosom of the one, more inhospitable, capricious or unjust than those upon or around the other.

I have confined myself, as you will notice, Mr. President, in all that I have said of the power of alteration or amendment, to the contract created by the act of 1862 as amended by that of 1864: a *continuing contract, still in process of being performed*, and to the rights of the companies resting in and upon that contract only. I do not contend, I never have contended, that the power extended so far as to authorize Congress to divest property or rights which, though originally depending upon, or growing out of, that contract, have become so far vested as to be able to stand upon another foundation, without the direct present or future support of that contract. The lands which have been patented to the company, for instance, which might rest upon the patent, and so of any other rights not dependent for immediate support upon the contract, whether those rights are still vested in the companies or in third persons derived from them. Property or rights thus vested cannot, I admit, be divested by the legislative power. The fifth and fourteenth amendments to the Constitution against depriving any person of his property without due process of law, protect such property and rights of property from the legislative power, and they can only be divested, without consent of the owner, by the judiciary. As a general principle laws operate upon the future, and not upon the past so as to affect contracts which have been fully performed, unless some special power is given by the Constitution or some special provision of the contract for still holding a control over it, after it should thus vest, which I do not claim is the case here.

Mr. President, if I were discussing this case in the Supreme Court of the United States, and not in the Senate, I would leave it to rest entirely upon the principles which I have endeavored to explain and the legitimate, logical and necessary results which flow from those principles, with all of which that court is entirely familiar, and which they have many times, by clear implication, and many times expressly adopted and applied; though my friend from Ohio does not seem yet to have heard of it. And I would as soon think of blazing the shade-trees along the avenue, to enable the judges of that court to find their way to the court-room, as to go to the trouble of citing cases to establish these principles already so familiar to that court. But the Senator from Ohio has cited a few cases which he seems to think are not in harmony with these principles. He has gone back through a great many years in search of these few cases; and has shown some familiarity with the old books and old decisions.

But all his legal research, all his powers of memory, even his powers of imagination, which seem to be of no mean order, all seemed struck with a sudden paralysis, when he reached the first volume of Otto's Reports, which comes down to the October term of 1875. All since that period seems to be, or to have become, suddenly an entire blank in his mind: The Supreme Court have made several important decisions since that time, bearing directly upon the great question of power he was discussing; but he does not seem to have been aware

of the fact; though my brother Davis, the other day, cited and commented upon them, and his speech was upon the Senator's table a day or two before he spoke. But he seems to have overlooked that speech and those authorities, which so clearly demonstrated the power of Congress against which the Senator contends, and demonstrated that power, not only from other and previous decisions, but from repeated decisions of the Supreme Court since the time of the first Otto: Why did not the Senator refer to these cases? And why did he not, at least, undertake to reply to the argument of the Senator from Illinois bearing upon them?

Mr. President, had the Senator learned from experience, that it is useless and imprudent to attempt the impossible? and that it is best to keep as far as possible from a point which he could neither meet nor evade, if he approached it? and that it would be safer to travel some obscure by-way, though he had to grope his way by the uncertain light of dicta and irrelevant decisions, than to venture into the glare of light which these cases shed over the great highway of legal authority. We will see, by and by, when we come to those cases, why the Senator saw fit to stop where he did, and why he was struck with sudden oblivion when he came to the first of Otto. It may be, however, that the severity of the effort he made to show that the statute under which The United States vs. The Union Pacific Railroad Company, 1 Otto 17, came before the court, was an amendment or repeal of the provision of a part of the act of 1862, if Congress had the power to amend or repeal, and the further effort to answer the contrary reasoning and decision of the court upon that point—it may be, I say, that these efforts were so exhaustive as to make him forget, or render him unable to notice and comment upon those subsequent cases. I am quite sure such an effort would have completely exhausted all my powers and reduced my less vigorous mind to a blank, before I had spent half the time and effort in that direction which he did: especially when I should have reached that point in the decision which says, "It is hardly necessary to say that it would have been idle to authorize a suit, had Congress intended to repeal the provision on which alone it could be maintained." When I should have come to that kind of reasoning I am quite sure that any attempt on my part to controvert it, would have reduced me to utter insanity; and I should have been compelled to dread the sight of Otto's Reports, from that day forward, after such an encounter with the first volume.

But Mr. President, not having made any such attempt, I have conceived no greater dislike to Otto's Reports than to any other; and I will proceed to call the attention of the Senate to some cases decided by the Supreme Court which are contained in the fourth Otto. I should not venture to repeat these cases so ably stated by the Senator from Illinois, if he had not failed to secure the attention of the Senator from Ohio to them, and I hope to have better success in that way. I read these cases when they first came out. But from that time until I had prepared all the foregoing portions of my argument, last Saturday evening, I never examined one of them. When I undertake to reason upon principle I prefer to carry out the principle first, without mixing up cases and authorities with the line of thought. Then I am in the habit, when I have the time, of looking into authorities to see how others have reasoned upon the same principle: and to see if there is any occasion to modify my own course of reasoning: and to correct myself, if I find I have been wrong. But, in this case, having since looked carefully into those authorities, I find not one word to correct.

The first case to which I shall call attention is that of Peik *vs.* Chicago and Northwestern Railroad Company, fourth Otto, 164. I will read the head notes which contain all the principles.

1. The Chicago and Northwestern Railway Company was, by its charter, and the charters of other companies consolidated with it, authorized "to demand and receive such sum or sums of money for the transportation of persons and property, and for storage of property, as it shall deem reasonable." The constitution of Wisconsin, in force when the charters were granted, provides that all acts for the creation of corporations within the State "may be altered or repealed by the Legislature at any time after their passage." *Held*, that the Legislature had power to prescribe a maximum of charges to be made by said company for transporting persons or property within the State, or taken up outside the State and brought within it, or taken up inside and carried without.

2. Certain Wisconsin railroad corporations were consolidated with others of Illinois on terms which, in effect, required that the consolidated company should, when operating in Wisconsin, be subject to its laws. *Held*, that Wisconsin can legislate for the company in that State precisely as it could have legislated for its own original companies, if no consolidation had taken place.

3. The act of Wisconsin, approved March 11, 1874, entitled "An act relating to railroads, express and telegraph companies, in the State of Wisconsin," is confined to State commerce or such interstate commerce as directly affects the people of Wisconsin. Until Congress shall act in reference to the relations of this consolidated company to interstate commerce, the regulation of its fares, &c., so far as they are of domestic concern, is within the power of that State.

4. The decision of the supreme court of the State of Wisconsin, that said act of March 11, 1874, was not repealed by that entitled "An act in relation to railroads," approved March 12, 1874, is binding upon this court.

5. Where property has been clothed with a public interest, the Legislature may fix a limit to that which shall in law be reasonable for its use.

6. No party to this record can raise the question that the statute of Wisconsin violates the obligation of the consolidated company, under the land grant to the Wisconsin and Superior Railroad Company, to keep the part of its road which formerly belonged to the latter company open as a public highway for the use of the Government of the United States, free from toll, &c.

It will be seen by this, that the provision reserving the power of alteration or repeal was not actually inserted in the charter, but was contained in the Constitution which, in effect, made it a part of this and any other corporation charters granted under it: the principle being exactly the same and no other, from what it would have been had it been inserted in the charter without such constitutional provision. It will be seen further that, by the charter, granted long prior to the law in question, the company was expressly authorized to "demand and receive such sum for the transportation of persons and property as it should deem reasonable;" thus vesting the entire power in the company itself to determine what should be its rate of charges; that the Legislature by a subsequent law, passed long afterward, prescribed maximum charges beyond which the companies should not go—thus directly conflicting with that provision of the charter, and operating as an amendment to it to this extent, if valid. And the Supreme Court held this act to be a valid exercise of legislative power. And yet this was a State law which, under the provisions of the Constitution against impairing the obligations of contracts, would have been void, but for the reservation of the power in question.

The next case to which I call attention is that of the Chicago, Milwaukee and Saint Paul Railroad Company *vs.* Ackley, 4 Otto, 179, where, under the same constitutional provision and the same law, it was held as I now read from the head-note of the case:

A railroad company in Wisconsin cannot recover for the transportation of property more than the maximum fixed by the act of that State of March 11, 1874, by showing that the amount charged was no more than a reasonable compensation for the services rendered.

That case is even a little stronger than the other, for the court held

that even if it be shown that the maximum charges fixed by the Legislature were unreasonably low, it would not alter the case.

The next case which I shall notice is that of Stone *vs.* Wisconsin, 4 Otto, 181, the head-note of which is as follows:

As giving a construction to the State constitution and statute, this court accepts the decision of the supreme court of Wisconsin, that the charter of the Milwaukee and Waukesha Railroad Company, granted by the Territory, is subject to repeal or alteration, inasmuch as it was not accepted, nor was the company organized, until after the admission of the State into the Union, under a constitution which continued that act in force, and provided that all laws for the creation of corporations might be altered or repealed by the Legislature at any time after their passage.

There it will be seen that the supreme court of Wisconsin had held that a certain act came within the constitutional provision although the act had been passed before the constitution was adopted but not accepted by the company until after. That came to the Supreme Court of the United States, and they decided as has just been read. It is manifest from this that the court could not have accepted the decision of the supreme court of Wisconsin as they did, if they would not so have decided themselves, without that decision; as this was a charter enacted before the constitution was formed containing the reservation of power; and the question of impairing the obligations of contracts was clearly raised in it, and the constitution of a State, upon such a question, is but a State law, and liable to the same objection on this ground as a statute would be. And, unless the reservation of power, by the constitution which took effect after the charter was granted, but before it was accepted, had been looked upon as, in effect, incorporated into the charter, the court could not have maintained the legislation which, but for the reservation of power, must have been held void, as impairing the obligation of the contract; so that this case stands substantially upon the same ground as the others I have cited from the same volume.

The fourth case which I cite from the same volume is the Chicago, Burlington and Quincy Railroad Company *vs.* Iowa, page 155. The charter of the Burlington and Missouri River Railroad Company, upon which the question arose, was silent upon the question of power to regulate tolls either by the company or the State. Years subsequent to the charter the State passed an act regulating freights on all the railroads of the State. The company claimed that this was a violation of the contract created by their charter. The court held that, though the company had the same power to make contracts that an individual would have, still the Legislature had the right to regulate the rates of fare and freight; the company being common carriers, and their business, therefore, of a quasi-public nature. I read the head-notes as far as it relates to these points:

1. Railroad companies are carriers for hire. Engaged in a public employment affecting the public interest, they are, unless protected by their charters, subject to legislative control as to their rates of fare and freight.
2. The Burlington and Missouri River Railroad Company has, within the scope of the authority conferred by its charter, and subject to the limitations thereby imposed, the power of a natural person to make contracts in reference to its business. Like such person, it or its assignee, the plaintiff in error, is, under the same circumstances, subject at all times to such laws as the General Assembly of the State may from time to time enact.

The court say in that case, page 161, in giving the opinion:

They [the company] are therefore engaged in a public employment affecting the public interest; and, under the decision in Munn *vs.* Illinois, (4 Otto 113,) subject to legislative control, as to their rates of fare and freight *unless protected by their charter.*

The case is not directly in point upon the question we are discussing, though it sheds much light upon it. I read it specially for the purpose of preventing any false inferences from the qualifying clause I have cited, "unless protected by their charters." It clearly does not mean that the tolls could not be regulated by the Legislature though the charter itself expressly gave the company the right to regulate them, if, at the same time, the charter itself, or the constitution or any general law subject to which the charter was passed, reserved the power of amendment and repeal; for, in such case, the charter would not protect them, as the court had already decided in the three cases I have just read. But if there were no such reservation of power in the charter, the constitution or the general law, then, perhaps, an express provision in the charter, giving the company the right to regulate the fares, might preclude the power of amendment—though I am strongly inclined to think that, within the principles of the decision in this and the Munn case, the court would hold that the Legislature or the courts, if not both, might interfere to reduce the rates if the company should fix them unreasonably high. That, however, is not involved in this case.

The next decision of the Supreme Court of the United States to which I call attention was made at the present term and is not yet published, the case of Shields *vs.* Ohio—for the statement of which I avail myself of the analysis presented here the other day by the Senator from Illinois:

That doctrine—

Speaking of the doctrine in the cases which have been read—

was during the same term applied to cases arising in Iowa, Illinois, and Minnesota, and at the present term to a case in Ohio. Shields *vs.* Ohio involved the following facts: The constitution of Ohio, which took effect in September, 1851, ordained that "no special privileges shall ever be granted that may not be altered, revoked, or repealed by the General Assembly." (Article 1, section 2.) "The General Assembly shall pass no special act conferring corporate powers." (Article 13, section 1.) "Corporations may be formed under general laws, but such general laws may from time to time be altered or repealed." (Article 13, section 2.) A railway company was prior to that date incorporated under a charter, which fixed no limitation as to the rates for the transportation of persons.

In 1856 the Legislature passed a general law authorizing, upon certain terms and conditions, the consolidation of railway companies. Several corporations, including the one so operating under a special charter granted before the adoption of the constitution, availed themselves of the provisions of that act and formed a consolidated company. An act of the General Assembly in 1870 limited the charges for passengers to three cents per mile, and the court held that this limitation could be imposed without impairing the obligation of a contract, notwithstanding the absence of any provision in the charter of one of the companies reserving to the Legislature any control over fares and freights. The reasoning of the court is that by consolidating under the act, the respective companies accepted it with all its conditions and restrictions, and among them was the liability of the consolidated company to be dealt with by the General Assembly of Ohio in the exercise of the power reserved to it under the constitution of the State.

Now, Mr. President, it is quite manifest, from the first three cases I have cited from the fourth Otto, and the case of Shields *vs.* Ohio, not yet published, that the Supreme Court of the United States, in deciding what the legislative power may do, under an express and unrestricted power of amendment and repeal, have not, as the Senator from Ohio did, attempted to stop half-way down; but that they, in effect, hold, as I have endeavored to show must be the result upon principle, that, no matter how express any provision of a charter or contract may be, or however advantageous to the company, the Legislature may, in their discretion, whenever they think it right, amend or repeal it; the only limitation being that such repeal cannot affect

rights so vested as no longer to need the direct support of the contract, as such. Those which do need the direct support of the contract to sustain them, and stand upon that alone with no superadded right, if they can be said to be vested at all, under a charter reserving the unrestricted power of amendment and repeal, are only vested subject to the exercise of that power, the primary condition of their existence. This limitation, as to vested rights, as I have explained it, is exactly that which many of the cases and some of those cited the other day by the Senator, long ago laid down and established. See, for instance, Miller *v.* the State, 15 Wallace, p. 498, cited by him; see also Holyoke *v.* Lyman, 15 Wallace, 519.

Mr. President, I think the Senator from Ohio did not show just what this case decided. I will proceed to do so, and then comment upon so much of the case as he relied upon, and it will be found that this case stands upon the same ground:

A constitution of New York, made in 1826, ordains that "corporations may be formed under general laws, but shall not be created by special act except in certain cases;" and also "that all general laws and special acts, passed pursuant to this section, may be altered from time to time or repealed." And a statute of New York, passed A. D. 1828, enacts that "the charter of every corporation that shall be thereafter granted by the Legislature shall be subject to alteration, suspension, and repeal, in the discretion of the Legislature."

In this state of things, a general railroad law was passed in 1850, authorizing the formation of railroad corporations with *thirteen* directors. The formation of a company under this general law being subsequently contemplated, with a capital of $2,000,000, to build a road fifty miles long, the Legislature authorized the city of Rochester to subscribe $300,000 to it; and enacted that if the company accepted the subscription, the city should appoint one director for every $75,000 subscribed by it, that is to say, should appoint four directors out of the thirteen contemplated; the other stockholders, of course, appointing the remaining *nine*. The company did accept the subscription, and the stockholders other than the city subscribed $677,500, but paid up only $255,000. Then the enterprise for all but eighteen miles of the road was abandoned. The city had paid its $300,000 subscribed. In 1867 the Legislature passed another act giving the city power to appoint one director for every $42,855.57 of stock owned by the city; in other words, establishing the same ratio that existed among the subscribers for the stock at the time the original subscription was made. The effect was to give the city *seven* directors and to leave the other stockholders but six. These last stockholders, regarding the act of 1851 as making a contract that they should have nine directors and the city but four, and that the act of 1867 violated that contract, elected their old nine. *Held*, on a *quo warranto*, that the act of 1867 did not, in view of the State constitution and the act of 1828 making charters subject to alteration, suspension, and repeal, make such a contract, and that the act of 1867 was constitutional.

Now I turn to some language commented upon by the Senator from Ohio and which he seemed to think of great force in supporting his position; but fortunately it happens that that very passage which he cited lays down the very distinction, the very line of distinction between what can and what cannot be done that I have laid down:

Power to legislate—

Say the court—

founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such a charter, and which by a legitimate use of the powers granted have become vested in the corporation.

As, for instance, if a corporation in the legitimate exercise of its powers obtains capital enough to purchase lands, if it has the right to do it, the repeal of the charter would not divest the title to the lands. So if they obtained personal property, the repeal of the charter would not divest the personal property although they did obtain it by a legitimate use of the exercise of their corporate powers. That is all there is of that. But the Senator has marked some other passages to which I will call attention:

But it may be safely affirmed—

Say the court—

that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of the stockholders and of creditors, and for the proper disposition of the assets.

If the Senator from Ohio had searched the law libraries of the United States he could not have found a case more directly and more strongly in point and in favor of the position which I maintain. But let us see a little further what this is. They have saved the right then to exercise any power to compel a corporation to administer their affairs in any proper manner "to secure the due administration of its affairs and to protect the rights of the stockholders and of creditors." What else are we attempting to do by the bill reported by the Judiciary Committee? Will somebody tell me? What else are we attempting to do? We are simply saying to these companies "You owe us a very large sum of money, and though it be payable years hence and we are unable to obtain any of the interest on the bonds we have loaned you, it is no more than just, it is no more than asking you to put yourselves on the common business principles of business men and honest men, to begin to provide a sinking fund to meet that debt at maturity;" and that is all the power we seek to exercise here.

But this is not all. There is another passage in this case to which I wish to call the attention of the Senator from Ohio. The opinion goes on to give examples—and this also the Senator from Ohio had marked as being very important and I think it is; I think it is important as showing most clearly the right to exercise this power. He may draw the other inference if he can:

Such a reservation it is held—

Say the court—

will not warrant the Legislature in passing laws to change the control of an institution from one religious sect to another, or to divert the fund of the donors to any new use inconsistent with the intent and purpose of the charter.

Do we ask anything of that kind here? Nothing of the kind. Of course, one of the instances here put by the court is that of attempting to transfer the property of one religious society to another, transferring the property of A to B, which no man claims that any legislative power can do. But the court goes on to say:

Or to compel subscribers—

And this is a passage marked by the Senator from Ohio—

Or to compel subscribers to the stock whose subscription is conditional, to waive any of the conditions of their contract.

Did anybody ever suppose that that could be done by legislative power? Where, for instance, the stockholders agreed to pay a certain sum, to take a certain amount of stock, provided the road was run by a certain point, to a certain town, or through a certain farm, that is a condition and the court simply held in this phrase that a court cannot compel such a subscriber to the stock to waive that condition and be compelled to pay though the road run somewhere else. Did any one ever claim they could?

The Senator referred also, and I will refer, to the case of Holyoke *vs.* Lyman, 15 Wallace, 519. That is a case to which I have referred before on several occasions. I will first read the head-note and then read from the opinion;

1. By the settled law of Massachusetts, the rights of fishery in such rivers as the Connecticut, even above the point where it is navigable for boats or rafts, are public rights, and, unless there be some express provision to the contrary, are subject to such reasonable regulations as the State may make for their protection;

including the right to require of persons who own or build dams, that they construct such fishways as will enable migratory fish to pass from the lower to the higher level of the water occasioned by such dams.

2. The provision of the revised statutes of Massachusetts, chapter 44, section 23, and general statutes, chapter 68, section 41, declaring that acts of incorporation shall be subject to amendment, alteration, or repeal, at the pleasure of the Legislature; reserves to the Legislature the authority to make any alteration or amendment of the charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the Legislature may deem necessary to secure either that object or other public or private rights.

3. After a manufacturing corporation, chartered with authority to construct and maintain a dam across a river, paying damages to the owners of fishing rights above, and whose charter does not expressly exempt it from maintaining the dam without a fishway, and is subject under the provision above quoted to amendment, alteration, and repeal at the pleasure of the Legislature, has paid such damages and constructed the dam without a fishway, so as to destroy the fishing rights above and to impair similar rights below, (for the injury to which last no compensation has ever been made or provided,) that corporation, or any other which purchases its dam under the authority of a subsequent statute, may be constitutionally required by the Legislature to construct a fishway in the dam to the satisfaction of commissioners appointed by the Legislature for the purpose.

That is the substance of the decision of the Supreme Court and here perhaps before I go to anything else, I ought to comment upon this language in the opinion lest it should be thought that this case does not go as far as it really does. It says:

That charter does not expressly exempt it from maintaining the dam without a fishway.

It so happened in that case that that charter did not expressly exempt the company from maintaining a fishway. The Legislature passed an act requiring them to maintain one, although the original act contained no such provision; and this put upon them an additional charge. The question was as to the constitutionality of that act. What was then the question before the court? Not upon a charter which did contain a provision expressly exempting them, and whatever the court might say upon such a charter would have just as much authority as what you or I or any other man or boy should say in the streets of Washington and no more as authority. All the case decides, therefore, is that where its charter does not expressly exempt a company from constructing a fishway, the Legislature might require them to construct it although their charter did not require it. That is the effect of the decision.

Mr. TELLER. Will the Senator allow me to ask him a question?

Mr. CHRISTIANCY. Not now. I am pretty nearly exhausted.

Mr. TELLER. I wish to ask a question on that point.

Mr. CHRISTIANCY. Perhaps I shall get through with the point to the Senator's satisfaction before I am through with that case; and "sufficient unto the day is the evil thereof."

There is no provision in the law of 1862 and 1864, that the companies shall not be required to establish a sinking fund, and therefore within this decision Congress has the right to require it by amendment.

But, that the court in that case did not mean to decide that the amendment would have been void, had there been an express exemption in the charter, is evident from the fact that the same court who made the decisions, and Judge Clifford who wrote the opinion, concurred in the Wisconsin cases I have cited, that, though there was an express provision in the charter giving the company the right to establish freight charges, yet a subsequent legislative act regulating these charges, was valid and constitutional.

But, Mr. President, I do not put the case on any such narrow

ground as that. I do not care if it had been expressly stated in the charter that they never should be required to establish a sinking fund, I say we have the power to change it while the contract remains in process of execution and before it is entirely executed. I make no half-way work with this case.

Mr. MATTHEWS. Will the Senator from Michigan allow me to interrupt him a moment? I shall not interrupt him without his consent.

Mr. CHRISTIANCY. The Senator sees very well that I am considerably fatigued, and I have some distance yet to travel, and he will have full opportunity to reply to whatever I may have said or to whatever I may say.

Mr. MATTHEWS. I shall not ask to burden the Senator.

Mr. CHRISTIANCY. I now come to those passages in that opinion which were marked by the Senator from Ohio. They are these:

> Vested rights, it is conceded, cannot be destroyed or impaired under such a reserved power, but it is clear that the power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant and to protect the rights of the public, and of the corporators, or to promote the due administration of the affairs of the corporation.

Simply quoting the very language used in the Miller case, which precedes it. There is another passage marked in the same case, and that I will also read:

> Power to legislate, founded upon such a reservation, is certainly not without limit, but it may safely be affirmed that it reserves to the Legislature the authority to make any alteration or amendment in a charter granted, subject to it, that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, which the Legislature may deem necessary to secure either the objects of the grant or any other public right not expressly granted away by the charter.

Mr. President, there was no such question in that case, as I have already shown, as to the public right of fishing or the establishment of a fishway. Although the court adds that qualification, it is a qualification which does not exist in fact. The courts are always in the habit of going no further than the facts of the case call upon them to go. There is no decision here that if they had granted a right, unless it was something in the shape of a vested right, which it is not, that an amendment could not be made.

Mr. THURMAN. What is there in the case contrary to that?

Mr. CHRISTIANCY. Nothing whatever, but it sustains it.

But the doctrine laid down by the Supreme Court in the Wisconsin cases was not a new one. Long before that time, in Tomlinson *vs.* Jessup, 15 Wallace, 454—the very volume from which the Senator from Ohio cited two other cases: (while he seems to have overlooked this) decides without reservation the very doctrine for which I contend and the same principle subsequently applied in the Wisconsin case. I read the head-note of this case which shows the whole principle decided and sufficient of the facts to show the application of the principle. This case was decided in 1872:

> The Northeastern Railroad Company was incorporated by the Legislature of the State of South Carolina in 1851, for fifty years, and the usual powers of railroad companies were granted to it. At that time a general law of the State was in existence, passed in 1841, which enacted that the charter of every corporation subsequently granted, and any renewal, amendment, or modification thereof, should be subject to amendment, alteration, or repeal by legislative authority, unless the act granting the charter or the renewal, amendment or modification, in express terms excepted it from the operation of that law. In 1855 the Legislature passed an amendment to the charter of the company, providing that its stock, and the real estate it then owned, or might thereafter acquire, connected with or subservient to the works authorized by its charter, should be exempt from taxation dur-

ing the continuance of the charter. This act contained no clause excepting the amendment from the provisions of the general law of 1841. In 1868 the constitution of the State was adopted, which requires that the property of corporations then existing or thereafter created, shall be subject to taxation, except in certain cases, not affecting this case. The subsequent legislation of this State carried out this requirement and provided for the taxation of the property of railroad companies, and under it the property of the Northeastern Railroad Company was taxed; *Held*, that the taxation was legal and constitutional; that the power reserved to the State by the law of 1841 authorized any change in the contract created by the charter between the corporators and the State, as it originally existed, or as subsequently modified, or its entire revocation.

Now, let us see further what they held:

The object of the reservation was to prevent a grant of corporate rights and privileges in a form which would preclude legislative interference with their exercise, if the public interests should at any time require such interference, and to preserve to the State control over its contract with the corporators, which would otherwise be irrepealable and protected from any measures affecting its obligations.—15 *Wallace*, 454.

That the courts say is the object of such reservation.

Mr. President, it is too manifest to admit of a moment's doubt, that the Supreme Court of the United States has, in the cases I have cited, and down even to the present term of that court, fully and squarely decided the question of power involved in the present controversy, against the position maintained by the Senator from Ohio, and in favor of the power we claim.

This court is the final arbiter upon all such questions, and the law of the land. They will have to decide the question growing out of the bill of the Judiciary Committee, if that bill passes, and from that decision there is no appeal. If the Senator from Ohio [Mr. MATTHEWS] is not satisfied with the decisions of that court, he has a right to say so. But does he, does any one here believe that, in consequence of the argument he has made here, or any that he can make, however able, he can shake or reverse, or induce that court to reverse, this long line of decisions? And I appeal to Senators, whether it is not wiser and safer to rely, in this momentous matter, upon the Supreme Court, than upon the argument of the Senator from Ohio, able and astute as it may be, opposed to those decisions.

Mr. President, I will now take up those authorities cited by the Senator from Ohio from the Federal courts, which I have not already noticed. It is idle to run through the State reports upon this question, for whatever they may be, they could not affect the authority of so many recent decisions of the United States Supreme Court.

One of the cases which he cites is that of the United States *vs.* Union Pacific Railroad Company, 8 American Law Review, 356. This was a case in the circuit court of the United States in Connecticut. The head-note of this case shows that it can be no authority for anything. Two opinions were given directly in opposition to each other: and the case, I am informed, is now in the Supreme Court of the United States. When that court shall decide we shall have an authority in that case—not before—so much for this case.

Another case which he cited was Fletcher *vs.* Peck, 6 Cranch, 87. No question involved in that case comes within gunshot of anything involved in the question of power now before us. The State of Georgia had made a legislative grant followed by a patent from the governor, of a large tract of land to one James Gunn. Afterward a subsequent Legislature, claiming that the first grant was void on account of bribery of the Legislature and fraud in the procuring the passage of the act, passed another act declaring the first act void and asserting the title of the State to the lands. The court held the

first act valid, and that the patent of the governor to Gunn, under the authority of this act, vested the title in Gunn. Clearly here was no question of corporate rights. No question of a charter or a reservation of the power to amend, or repeal reserved in any act or contract. It was a case of vested rights, under the grant of the land: and which could only be divested by the consent of the owner, or by the action of the judiciary. It is exactly in accordance with the views I have expressed. It is not difficult to see that, whatever may have been said upon such a case can be of no possible authority upon the question we are now discussing. Whatever language may have been used by the court, the Senator from Ohio who is a good lawyer, knows very well, must be construed and understood with reference only to the case and the subject-matter then before the court—so much for this case. This case is so foreign to any point in this case, that I had some suspicion he had cited it to show that the act of 1864 we have been discussing could not be held void for any bribery or fraud which might have secured its passage: but as the Senator did not say that this was his purpose I abstain from comment on this point.

The Senator also cites the case of one of these companies *vs.* Peniston, 18 Wallace, 5. This was a case holding the company liable to taxation upon their property by State authority. I suppose the reading of the head-note of this case discloses in few words, the portion of the opinion of the court upon which he relies:

> The exemption of agencies of the Federal Government from taxation by the States is dependent, not upon the nature of the agents, nor upon the mode of their constitution, nor upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it, or hinder the efficient exercise of their power. A tax upon their *property* merely, having no such necessary effect, and leaving them free to discharge the duties they have undertaken to perform, may be rightfully laid by the States. A tax upon their *operations* being a direct obstruction to the exercise of Federal powers may not be.

They do not say that it would be. If the Senator from Ohio can see any very strong bearing which that case has upon this, his spectacles have a very much longer focal distance than mine. The question was whether taxation by a State upon one of these companies would be void because it interfered with an agency of the United States. What bearing has that here? They are speaking of a tax levied by a State which the State might not have the power to levy *as against the* United States. But does this mean that the United States, by act of Congress which is the guardian of the rights of the Federal Government, could not impose such a tax? It strikes me it would be a confusion of ideas to assert such a proposition. It would seem that Congress might have the right to waive such an injury as that to the Government, when Congress itself passes the act which thus affects the Government. The case of Marbury *vs.* Madison which the Senator cited is so entirely foreign to any questions we have before us that I will not weary the Senate by referring to it.

And now, Mr. President, in conclusion I feel bound to say, in compliment to my friend, the Senator from Ohio, that no man of merely ordinary abilities could make so able, so adroit and so plausible a speech as he has made, upon so scanty a supply of material in the way of legal principles or legal decisions. I sat in mute admiration of his skill, but could not appreciate his logic. No one but an able lawyer and an adept in forensic debate could dress up such a collection of irrelevant cases, suggestions, dicta and general remarks culled from decisions having no possible bearing upon the real question under discussion, and, by throwing over the combination the graces and

the coloring of a chaste and elegant diction, make the whole mass appear so much *like* law, with *so little law in it.*

Mr. MORGAN. Mr. President,——

Mr. THURMAN. The Senator from Alabama takes the floor, as I understand, on the pending bill.

Mr. MORGAN. Yes, sir.

Mr. THURMAN. I do not suppose he wishes to proceed to-night, and as he will reserve the floor for to-morrow, if he will consent, I will move that we proceed to the consideration of executive business.

Mr. MORGAN. I yield for that purpose.

Mr. THURMAN. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After twenty-five minutes spent in executive session the doors were reopened, and (at four o'clock and twenty-five minutes, p. m.) the Senate adjourned.

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MARCH 19, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. MORGAN. Mr. President, in the discussion of the question before the Senate I have no decided purpose to answer the remarks of any gentleman who has preceded me, nor do I give my full, implicit adherence to all that has been said in the debate upon points of law on which gentlemen have founded their opinions, in which I concur, as between these two bills. I will discuss this question as if the issue were broadly and distinctly presented between the bills submitted by the two committees whether Congress has the power under the Constitution of the United States which is claimed in the bill reported by the Committee on the Judiciary to so "add to, alter, amend, or repeal" the act of July 1, 1862, as it was added to, altered, amended, and repealed by the act of July 2, 1864, as to make obligatory upon the two railroad companies the provisions of the bill of the Judiciary Committee without the further express assent of those corporations.

The question as I present it, and in the phase in which it is most material to the country, is as to the power of Congress to provide by legislation, without the consent of the corporations, a further and efficient remedy for the security of the people—the tax-payers—against loss on the bonds loaned to the companies to aid in the construction and equipment of their railroad. It is this power to legislate for which I shall contend, as a right of Congress not dependent necessarily upon the further consent of the companies, but in virtue of its inherent constitutional authority; and also in virtue of the consent of the companies given, irrevocably, at the moment they accepted

the grant of the capacity to become bodies corporate and politic under the law. When I speak of the power of Congress to legislate, I do not refer to its power to contract, but to that supremacy of authority which gives to Congress, under the Constitution, and consistently with the faith, honor, and justice of the country, the right to prescribe the rules to govern individuals so as to promote "the general welfare."

I can scarcely conceive that Congress can derive its right to pass a law from the consent of the person to whom the law is to apply to be given in the nature or form of a contract based upon a consideration. I cannot well comprehend how a law passed by Congress and approved by the President is still subject to the veto of the person who is to be affected by it. Neither do I perceive how Congress can by law place any limitation upon its power to make further enactments unless the right created or secured by its first enactment can find some shelter under the prohibitions of the Constitution which prevent Congress from making other and different provisions touching that right.

The power I claim for Congress is that it may provide by law for the protection of the rights of the people under all circumstances. Whether the law for the protection of the people shall be enforced through the executive department or through the judicial department of the Government is not a matter which affects the power of Congress to enact it. It may be better or even essential that the law should be enforced through the judgment of a court rather than by the executive power, but this is not a consideration which affects the power to legislate. Such a question is brought to view only by the constitutional distribution of the powers of government. It does not arise necessarily when we are considering the power of Congress to enact any law on a given subject.

It may be a defect of the bill of the Judiciary Committee that it does not confer jurisdiction on the courts to do that which the bill attempts to do by the direct action of the law, and to enforce by the infliction of penalties and forfeitures; but if there is such a defect in the bill, which I do not discover, the question of the power of Congress is precisely the same in the one case as in the other; that question is whether Congress has such lawful grasp upon these corporations and their property as to compel them so to administer the same that the people shall not lose the security to which that property is pledged; that they shall suffer no loss in consequence of having loaned the companies many millions of dollars. It is perhaps not a very material question whether this grasp shall be exerted through the executive or the judicial arm of the Government. If Congress can give the courts the power to protect the people upon the existing state of facts by providing a security for these debts equivalent to that mentioned in the bill of the Committee on the Judiciary, that fact resolves all doubts as to its powers and leaves nothing open for discussion but the method of their exercise.

The Senate should congratulate itself that by a singular and novel parliamentary procedure it has this great question brought before it through the antagonistic action of two of its standing committees, arrayed against each other on so important a subject, and both committees unanimous. I believe that is the fact.

Mr. RANSOM. No.

Mr. MORGAN. Both committees are unanimous, so far as appears from any report that has been submitted to the Senate.

There is no prestige of authority on the part of either which gives any undue weight to either side of the question.

The necessity of considering this question now is very urgent. Each committee recognizes the fact, which is quite obvious even to men of less abilities, that we must do now or very soon whatever can be done to provide a means of paying this great sum of money at the maturity of the bonds issued by the Government to those corporations. I have not heard of any person who believes that the sum of these bonds and the interest paid and to be paid on them semi-annually by the Government can be reimbursed by the companies if they are allowed to run on until maturity without some provision being made to meet the debt. We must act in time or else incur a fearful responsibility to the country.

Aside from the onerous taxation which the people are being subjected to merely to add to the wealth of persons who have waxed fat, and are now kicking, and the enormous proportions to which these burdens must increase, there is now presented a question which must be solved in one of two ways. Either the people and their Government must succumb to the power accumulated in the corporations of the country or the corporations must be declared to be within that power of the law by which the legislative authority which gave them existence may so far control them as to prevent them from an abuse of their powers. Congress has not been lavish of grants of corporate franchises, but such as it has granted are of enormous magnitude and have quickly grown into controlling powers in Government, local and federal. The United States Bank and branches, the Cumberland Road, and a few insurance and navigation companies were about all the cases in which these powers had been exercised until we came to the national banks and the transcontinental railroads. Including a moderate value for the land grants to the railroads across the continent, and adding this to the capital stock of the national banks, it is within the bounds of safe calculation to estimate the capital which the corporations now existing under acts of Congress actually hold at $800,000,000.

If we estimate the amount of bonds, money, and property under their actual control, it is as much as one-eighth of the property, real and personal, assessed for taxation in 1876 and 1877 in all the States of the Union.

Thousands of men are in the employment or under the control of these corporations, where a few directors are invested with almost absolute power over them. This is a dangerous outlook for free institutions. There are kingdoms in the world whose crowned rulers have far less power than the presidents of some of these colossal corporations. Has all this power, backed by all this wealth, passed from the control of Congress so that no emergency of public necessity, no claim of the public welfare, no protection of the rights of the people can justify Congress in its regulation? Must Congress look into the wording of the charters and find there, and only there, the license or permission to exert its constitutional duty over these creatures of its will? Or, finding such license and permission reserved in the charter itself, in express words of the broadest signification, must it still probe and sound into the subject of the vested rights of these corporations to see whether it must not still refrain from the exercise of its express powers for fear that it may infringe some implied right or power of the corporations?

This matter is of startling magnitude, and we must meet and overcome the pretensions of these arrogant corporations to powers and rights which dispute the supremacy of the laws over them, or else we shall soon find them in the virtual possession of the whole power

of Government. It is plain to the view of every intelligent mind that it will require but few more gigantic corporations to absorb enough of the powers of Congress to leave the Government stranded and the people at their mercy. Their theory is that whatever powers they acquire are bargained for and paid for, and become property or vested rights to the extent that they possess any value, or are useful or needful to protect anything that possesses value.

If Congress can so sell and dispose of its constitutional powers beyond the right to resume their exercise at the behest of the general welfare of the public, it can strip itself finally of all powers and authority by granting it upon considerations, and in the form of vested rights to corporations which it may create.

It can bargain and sell to corporations the right to carry the mails and receive the revenues; to hold mail-routes or post-roads in perpetuity; it can sell letters of marque and reprisal to corporations and their successors forever; it can sell leases of the power of government in the Territories, establishing in the West a company such as the East India Company, and in Alaska a Hudson's Bay Company. Why may not all this be done under the imputed right of Congress to impart so much of its power to a corporation and to make that power irreclaimable that the corporation can defy the exercise of any power that may impair the value of the grant, no matter what public necessity may demand its exercise.

Congress can do no such thing as this; and if such abuse of its own high duty to the country in the sale or abdication of its constitutional authority is implied in the creation of any corporation, that corporation is itself unlawful. It is an unlawful fungus on the body-politic.

I have always doubted the right of Congress to create any corporation, but the greatest jurists of the country have held that the power existed to create them as governmental agencies. I do not remember a case where the Supreme Court of the United States has gone further than this in sustaining the power of Congress. If, however, it is to become a law of corporations, created by Congress, that they are protected against the after-exercise of power over them by Congress to the full extent that they are protected against State laws under the rulings in the case of the Dartmouth College, I shall never believe that Congress has such power. I can think of nothing more repugnant to a just view of the powers and duty of Congress than that it should undertake to confer peculiar and exclusive privileges on corporations, the mere creations of its own will, under which men can take shelter from their debts while enjoying every advantage of wealth, can escape the penalties of treason while plotting the destruction of the Government, can claim the exactions of monopoly beyond the power of correction by the law, and resist dissolution, or repeal, on the ground of having paid for perpetual power to oppress the people.

Congress cannot confer such powers on a few without inflicting wrong upon the many. It can do nothing of this kind except as a measure, means, or agency of public good. Exclude this feature from the measure, and Congress can find no ground on which to rest its claim of power to create a corporation giving to it peculiar and exclusive privileges. So when, by abuse, this feature is lost, and the corporation, ceasing to be an agency of public good or a proper agency of government, but on the contrary has become an evil, a nuisance, and an intolerable burden upon the people, Congress has either ceased to be what the people made it in their Constitution, and has abdicated

its great powers for a paltry consideration, or else it possesses the power to legislate to correct the evil conduct of its own creature.

On the authorities read in this debate, which are the plainest utterances of reason and the results of the most sedate judgment, the matters of law arising upon the issue joined between the committees are fully settled by the Supreme Court of the United States. I need not recur to them, for no man possesses the power to make them more clear by argument or illustration, and I believe that none have denied or will assail their authority as judicial utterances.

It seems to me that they do establish beyond reasonable question that a reserved power to alter, amend, or repeal a charter is a power to take from the corporation its existence or any right to arise in the future in virtue of any power it originally had. This does not include the right to take property that has been acquired in the exercise of the powers conferred on corporations, as the law now exists in this country, so as to deprive a creditor or stockholder of his rights in it; but this result is merely due to the fact that the law has been modified in this country into a more equitable system than that which prevailed in England. In England it was different.

I will read from Blackstone's Commentaries a few extracts for the purpose of presenting in that form which will strike the mind of every lawyer with more force than can be derived from any other source whatever, statements of law which I think belong to this branch of my argument:

> Corporations, by the civil law, seem to have been created by the mere act and voluntary association of their members, provided such convention was not contrary to law, for then it was *illicitum collegium*. It does not appear that the prince's consent was necessary to be actually given to the foundation of them, but merely that the original founders of these voluntary and friendly societies (for they were little more than such) should not establish any meetings in opposition to the laws of the state.
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> But, with us in England, the king's consent is absolutely necessary to the erection of any corporation, either impliedly or expressly given. The king's implied consent is to be found in corporations which exist by force of the common law, to which our former kings are supposed to have given their concurrence; common law being nothing else but custom, arising from the universal agreement of the whole community.
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> The methods by which the king's consent is expressly given are either by act of Parliament or charter. By act of Parliament, of which the royal assent is a necessary ingredient, corporations may undoubtedly be created; but it is observable, that till of late years most of those statutes which are usually cited as having created corporations do either confirm such as have been before created by the king, as in the case of the college of physicians, erected by charter, (10 Henry VIII,) which charter was afterward confirmed in Parliament; or they permit the king to erect a corporation *in futuro*, with such and such powers, as in the case of the Bank of England, and the society of the British fishery. So that the immediate creative act was usually performed by the king alone, in virtue of his royal prerogative.

That is a matter that ought to be borne in mind when we come to make application of a great many decisions and authorities on the question as to the power of the Legislature to revoke or to amend or to repeal or to modify the charter powers of a corporation. We ought to give attention to the source from which these powers were derived under that system of law from which we have derived most of our establishments and institutions. We ought to remember that in England it was the grant of the crown and that corporate franchises were matters that lay in grant. In this country they exist only by the consent of the law-making power, the Legislature, that power which in England it was alleged had the authority to break down a corporation and destroy it notwithstanding the royal charter, but which had no

power, except in perhaps one or two instances secured by Magna Charta, to create the corporation by its own act.

Having shown the manner in which corporations are created under the law of England, I will now proceed to read from the same authority something in reference to the manner of their destruction and the results that follow their destruction:

But the body-politic may also itself be dissolved in several ways, which dissolution is the civil death of the corporation, and in this case their lands and tenements shall revert to the person or his heirs who granted them to the corporation, for the law doth annex a condition to every such grant, that if the corporation be dissolved the grantor shall have the lands again, because the cause of the grant faileth. The grant is, indeed, only during the life of the corporation, which may endure forever; but, when that life is determined by the dissolution of the body-politic, the grantor takes it back by reversion, as in the case of every other grant for life. The debts of a corporation, either to or from it, are totally extinguished by its dissolution, so that the members thereof cannot recover or be charged with them in their natural capacities.

In a note which is appended a reference is made to the case of the King *vs.* Amley, 2 Term Reports, 532, in which it is asserted that the king cannot by his prerogative destroy a corporation. It must be done by an act of Parliament.

Now, coming to the law of corporations in the United States, we find that it has undergone many modifications. I read from Kent's Commentaries for the purpose of showing the method of dissolution here, and also for the purpose of showing the results of that dissolution after it has been decreed either by an act of the legislature granting the charter or by the judgment of a court for cause of forfeiture.

According to the old settled law of the land, where there is no special statute provision to the contrary, upon the civil death of a corporation, all its real estate, remaining unsold, reverts back to the original grantor and his heirs. The debts due to and from the corporation are all extinguished. Neither the stockholders, nor the directors or trustees of the corporation, can recover those debts, or be charged with them, in their natural capacity. All the personal estate of the corporation vests in the people, as succeeding to this right and prerogative of the crown, at common law.

That is American law as it stood originally. This learned commentator, who is the Blackstone of America, cites in a note to this part of the text some cases, and principally the State Bank *vs* The State, 1 Blackford's Indiana Reports, 267; Fox *vs.* Horah, 1 Iredell's Equity Reports, 358. In regard to the latter he says:

In this case in North Carolina the rigorous rule of the common law was declared by Mr. Justice Gaston in behalf of the Supreme Court, but he observed that by the revised statutes of North Carolina of 1831, the law received very important alterations, and on the forfeiture or dissolution of a corporation a receiver is to be appointed to take possession of the corporate property and collect the debts for the benefit of creditors and stockholders. The rule of the common law has, in fact, become obsolete and odious. It never has been applied to insolvent or dissolved moneyed corporations in England. The sound doctrine now is, as shown by statutes and judicial decisions, that the capital and debts of banking and other moneyed corporations constitute a trust fund and pledge for the payment of creditors and stockholders, and a court of equity will lay hold of the fund and see that it be duly collected and applied. The death of a corporation no more impairs the obligation of contracts than the death of a private person.

Having presented to the Senate so much of the law of England and of the United States upon this subject, it seems to me that we are better prepared to understand the force and bearing of the legislation which grew up first in the colonies and afterward in the States in reference to the disposal of the rights and the property of dissolved and dead corporations, and also in reference to restraints and restrictions upon their powers, and also that form of constitutional legislation which undertook to control in some of the States the charter powers of these institutions.

In the United States the rights acquired under a charter which is afterward repealed or dissolved for forfeiture are placed on the footing of many rights which, under the English law and under the laws of the several States, were added by operation of law to a right that was afterward revoked or declared to be invalid. A crop grown upon land to which the occupant had no title is saved by exemption laws so that the owner of the land cannot reach it. It is a gift of the law to the family. And it would be very difficult to justify any of the exemption laws, numerous as they are, in any of the States upon any other ground than the right of the Legislature to take from the reach of the creditor a portion of the property of a family, and to set it apart as a means of public benefaction so as to enable that family to have a home and shelter and a place of abode.

Property purchased by a third person under a judgment or decree that is afterward reversed and annulled cannot be reclaimed by the owner. The right to sell it was added by the law as an incident of the judgment, and under this added right the title passed to the purchaser. And so in many cases it has been held, and it has been also provided by statute, that persons having vested rights should yield them undue measure to purposes that better subserved the general policy of the law. In the abolition of primogeniture; in opening up the inheritance to let in posthumous children; in taking estates descended under the statutes of descents into the hands of the heir so as to declare them insolvent, thereby changing the title from the heir to the administrator, in very many cases the law has paid the debt to justice by intercepting and destroying vested estates, actually in the possession and enjoyment of people—with both souls and bodies—as well as rights vested in immaterial and insensate corporations.

It does not follow that corporations or their charter powers are indestructible, even if they are property. They must pay the debt to justice and law as fully as any other description of property, to say the least of it. The exercise of power by Congress over corporations of its own creation to control them in any way for the general welfare of the people is a clear right inherent in Congress under the constitutional grants of power. It may not reclaim property it has granted to a corporation or that has been acquired by it under its charter powers or that has been added to it under the exercise of such powers, but it is not to be argued from this that Congress may not destroy the corporation, or abridge its powers, or control their exercise, as the public welfare may require. The corporate powers are part of the law. They do not rest in a grant from the Crown, as was the case in England, nor in virtue of the personal right of citizens to associate under limited liabilities, as in the Roman law. In this country they are part of the law, and a repeal or modification of that part of the law alters the right except where it is protected as property, or as the obligation of a contract, by provisions of the Constitution.

I think it is quite safe to assert that the word "property," as used in the Constitution, has no reference to the sort of property, if it may be called such, that a corporation has in its charter powers and capacities. Except in one instance, property is always associated in the Constitution with the rights of natural persons: the people. This exceptional instance is in the fifth amendment: "Nor shall private property be taken for public use without just compensation." In this instance property evidently means that which is property in a material sense as distinguished from that which is incorporeal. It would be a curious proceeding to condemn to public use the right of a cor-

poration to make by-laws and to declare dividends, by a writ of *ad quod damnum*. Yet the property of a corporation may be so condemned, including its right of way. Evidently the charter powers of a corporation are not property within the meaning of that word in any clause of the Constitution. That these powers are in the nature of contract rights and are protected as being within the obligation of a contract is settled by many decisions. This rule has obtained as long as a free country of equal laws can well endure it, and it is about to perish, as is evinced by the universal tendency of legislatures and states in constitutional conventions to abrogate it.

It meets with no favor in any quarter. The courts aid by intendment all statutory checks upon this rule of decision, and Legislatures adopt the most tried and proven words to indicate a clear intent to complete its destruction.

The shelter that corporations found against the power of their creators to destroy, alter, or amend their charter powers was an American invention quite new and quite unexpected. When the States were being prohibited from passing laws to impair the obligation of contracts few corporations existed in this country that emanated from acts of legislation. They were created by charter from the Crown, as I have already shown. Parliament had abolished many corporations but had created few, and those few were chiefly in affirmance of ancient charters or prescriptive rights. If it had been the intention of the framers of our Federal Constitution to protect corporate charters or legislative incorporations against the power of Congress to undo at its leisure what it might do in haste and to recall the powers it may have improvidently granted, it is inconceivable that the States should have been expressly mentioned in the clause and that the prohibition should thus have been expressly confined to the States. This matter is really too plain to admit of argument. No court, so far as I know, has ever held that this prohibition rested upon Congress in reference to the charter powers granted by it to any incorporation. The first judge who may ever hold to this doctrine will probably derive his commission through the grants to some great corporation that has assumed the duty of amending the Constitution by the decision of a corporation court.

Congress, if it can make corporations, can unmake them, can alter and amend their charter powers, can control them in subordination to the public welfare certainly to the extent that their obligations expressed in their charters concern the public good and public security. And in the exercise of these powers Congress will act as justly, as wisely, as impartially, as carefully, and with as much regard for personal rights as the courts could do, and with more of representative authority from the people, who are the parties of the third part, than any court possesses. It begs the question to assume that Congress will do any wrong to the railroads, and therefore it has no power to take action with reference to any of their supposed rights.

They come to Congress for life and authority to act and the means of support, and they exist only by its consent. Are they immortal? Shall they live despite their creators' will so long as they can find men to keep up the succession or until some judge will say that they deserve to die? The jurists say they exist for life, and that life, unless they commit *felo de se*, continues at the pleasure of the authority that created them. They hold everything under the law and nothing without it, as is shown by the law which I have read.

These particular railroad companies entered into express agreement (if agreement it can be called) that Congress may at any time, having

due regard for the rights of the companies named herein, add to, alter, amend, or repeal this act. As this reservation in the first act has the greatest "regard for the rights of the companies" I will take that as being now the law, notwithstanding it is repealed by a subsequent and different provision in an amendatory law. Congress must have due regard for certain rights in exercising its power under this alleged contract. If nothing else could be urged as showing the jurisdiction of Congress to adjudge, decide, and take final action in this matter, this clause would confer the jurisdiction. As there is no constitutional standard by which the regard of Congress for the rights of these corporations is to be measured so as to ascertain whether its action evinces "the due regard" imposed upon it by this so-called contract, the law must determine what is such "due regard," and Congress enacts that law. It is made the final judge of the rightfulness of its action by the terms of this enactment as well as by necessity.

The power to be exerted is "to add to, to alter, to amend, or to repeal this act." This is purely legislative power, which necessarily implies legislative discretion as to the occasion on which and the time when it shall be exercised. Congress must judge when and on what account due regard to the rights of the companies justify and require this legislative action, otherwise there is some other power that may determine when and on what occasion it may legislate so as to add to, alter, amend, or repeal the law. What court or judge can make a decree that will reach Congress in this matter? It is insisted that due regard for the rights of the companies means that Congress shall so legislate as not to affect injuriously any of the rights of the companies.

To qualify the word "repeal" in this statute by the words "with due regard for the rights of said companies," is to destroy the meaning of "repeal," since a right so important as the right of existence, and upon which every other right of the corporation depends, cannot be repealed with due regard for the rights of the companies in the sense that the legislation shall not affect injuriously the rights of the companies. To give the sentence meaning, in the sense contended for, the word repeal must be as if it were not. And so of the words "alter" and "amend."

Congress had no interest in this law and has none now. It was the people and the corporators of the railroad companies that were concerned, Congress representing the people. The people loaned their bonds to the companies, and to provide for the reimbursement of the money to the people Congress provided a mortgage by statute (which is part of the charter) on all the property of the companies except the part of the road then constructed.

This property was dedicated by law, and not by contract merely, to the redemption of the bonds, so that whoever should divert the property from this purpose would violate the law. He would not violate the contract merely, but a statute, and could not be innocent. Such person so diverting the property and the person receiving it are equally guilty. Until these bonds are redeemed, this property, all of it, and its proceeds as well, is dedicated by law to the redemption of the bonds, subject to the use of the company in building and operating the road.

If Congress by its power to add to, alter, amend, or repeal that law cannot secure the faithful appropriation of this property to this end, the provision for the redemption of the bonds is not supported by any remedy which covers all the property mortgaged. If there is default in the redemption of the bonds, the Secretary of the Treas-

ury is to take possession of the railroad for the use and benefit of the United States, and also of the lands that then remain unsold. There is no provision of law to realize money from the property.

The engagement to redeem the bonds remains, and the road is still security for it, but the possession is changed. Is it not in the spirit of this contract to add to this law a means to raise money out of this property or its income to meet this engagement? And is it not "due regard for the rights of said companies," as well as to the rights of the people of the United States, that they should have the means to pay their debts set apart from their net earnings and funded, so as to prevent their stockholders from absorbing them in dividends? I cannot see how Congress, if answerable to the most sensitive tribunal for its misjudgment in reference to the rights of these companies, could be seriously challenged upon its conduct for having assisted these corporations to provide means to pay its debts and save its property. These companies are not free from defalcation in their dealings with the Government. Waiving for the present the question as to the extraordinary concessions made to them in the act of July 2, 1864, and the question of the actual cash paid by the stockholders for their stock, and blinding our eyes to the hideous Credit Mobilier, which like a beast of prey was permitted by the companies to gorge itself on this great enterprise, look to the roads that have been purchased and built from the income of these companies, and the millions of surplus in their treasury, while the people are bearing burdens that crush soul and body to pay the interest on their debt.

It is a thought that will sicken the hearts of the people for generations to come, that Congress, which has found the means to fasten them to "this body of death," should halt and hesitate to use the means provided in the very law under which this enormous wrong was perpetrated, to give them relief at some day, however distant.

The interpretation that I have given to the power to add to, alter, amend, and repeal the act of July, 1862, has received a powerful support in the act of July, 1864, which, without the consent of the companies, has added to, altered, amended, and repealed the former act.

An examination of the act of 1864 does not show that any consent of the corporation was provided for as a prerequisite or condition precedent to the law becoming operative and valid. It is a direct, positive enactment, taking effect *in præsenti*, an enactment that proceeds not from any contract, seeking right or power in Congress from the companies, but an act that assumes that Congress has the right to impose upon these companies the additional duties, modifications, alterations, amendments, and repeals that are contained in that act of July, 1864. That was almost a contemporaneous construction; you may say that it was a contemporaneous construction, for the reason that the Union Pacific Railroad Company had not in effect organized; it certainly had done no business of any consequence until after the act of 1864 was passed; so that Congress *in limine*, in the very threshold of this controversy, when the subject was fresh in the minds of the men who enacted the laws, exercised the power reserved to them under the act of the 1st of July, 1862, to enact amendments, alterations, repeals, and additions to that statute. This is a late day, Mr. President, to be raising this question. The first act contained the framework and the other the soul and spirit.

In the report of the Committee on Railroads there are two instances of a like character which admit the right of Congress to amend, alter, or repeal any part of any of these charters, without the

consent of the companies. In the fifth section there is this provision:

That this act shall take effect upon its acceptance by said railroad companies, or, if accepted by only one of said companies, then as to the company so accepting the same, which acceptance shall be filed with the Secretary of the Treasury within four months from the passage of this act, and shall show that said company or said companies have agreed to the same at a meeting of stockholders.

There the unity of these companies is dissolved by the force and power of this enactment, which cannot, of course, gain the consent of both companies, for it provides for a case of one consenting and the other refusing to consent. Where, then, does this law, in its practical effect upon this property and the rights of creditors and all concerned, gain its influence and its power except from the authority of Congress to impose new enactments upon the corporations so that a bill cannot be framed here by those able gentlemen who have espoused that side of the question, without themselves resorting to the very power that they deny as a right of Congress to regulate and control these corporations.

Another instance of that kind occurs in the third section of the bill, which it is not necessary to read; but there is one thing to be observed in regard to this business: that while great complaint is made of dealing with these corporations without their consent, taking their property without the consent of their stockholders, and applying it to the benefit of the Government of the United States, and all that, it is known that each of these companies owes a debt just precisely, I believe, the equivalent of the debt which it owes to the United States Government, maturing at the same time and at the same intervals, with interest maturing at like intervals also, and both these committees have gone to work to take all the assets and income, one of them taking two millions a year and the other taking more than that, and apply them to the indemnification of the United States Government without ever once saying a word to these other creditors who have got the prior mortgage and the first right of satisfaction.

The point I make is, that the Committee on the Judiciary as well as the Committee on Railroads have both agreed that Congress has the right, the one by virtue of a contract and the other by force of legislation, to take the assets and property of these corporations and apply them to the indemnification of the people of the United States against their bonded debt and the interest thereon, without once consulting or conferring with those creditors to whom the Congress of the United States has by statute given a prior lien and right of satisfaction. Which is right now?

Mr. THURMAN. One moment. The Judiciary Committee bill does not interfere with the rights of the first-mortgage bondholders; but the Railroad Committee's bill absolutely takes money away from the first-mortgage bondholders.

Mr. MORGAN. The Judiciary Committee bill perhaps did not go quite as far as I stated in my reference to its action, but it has exercised a power which I think amounts to the imposition of laws on these corporations which might affect their ability even to pay the interest on their first-mortgage debts. It has exercised that power, as I think rightfully; but the Committee on Railroads takes the same assets, pledged by mortgage to the holders of the first-mortgage bonds, and applies them by contract and agreement with the companies to the payment of a certain second-class debt. Now, such a transaction as that between individuals in any State where the laws applicable to fraudulent conveyances are supposed to apply would be held to be fraudulent, as

well as unlawful in other respects. It has occurred to me as being wonderful that the Committee on Railroads should have resorted to a power which according to their argument does not exist, and which according to all the morality that is enforced in judicial sentences would be exceedingly dubious in its moral character.

It turns out after this investigation of these proposed laws that no law can be framed to reach both companies and to enforce justice against them that does not assert the power in some stage of the progress to resort to compulsory legislation to enforce the rights of the Government. This bill reported by the Judiciary Committee is only a measure to impose additional and merely administrative duties on the companies, exactly comporting with their obligation to redeem the bonds issued by the Government. They are not even new duties, and they are by no means duties growing out of new or altered terms of the contract of the companies with the Government. They are mere specifications of a duty or of duties which are clearly included within the general duty of providing the means to secure the Government.

Without such specifications of duty superimposed by the statute law no court could now or hereafter proceed to realize a fund from this great property or its magnificent income with which to redeem the bonds. Such is the state of the existing statutes. If Congress may not declare by law the manner in which these pampered favorites of its illegitimate lust for power shall perform their contract duty of providing means to refund, even in part, to a taxed and burdened people the vast sums which they have poured into its Treasury, then the boasted supremacy of the centralized national power is but the synonym of imbecility. The measures of both the committees admit that action is indispensable for public safety and that provision must be at once made for this purpose either by law or by contract. The Judiciary Committee report a bill that provides for its payment by the companies out of their assets, (really only a part of their income,) as realized, on terms easy to the companies.

The bill reported by the Committee on Railroads makes the people pay it with only the assistance of about $2,000,000 now in hand and $1,000,000 per annum contributed by the companies in semi-annual payments. It requires us to pay the debt of the companies and to state an account against them without rests at any time, and without even allowing us to charge the companies simple interest on any payment we make for them. When we have paid this vast sum we will have paid every dollar in money with no return of interest. It will amount at the maturity of the bonds to about $154,000,000. The bill reported by the Committee on Railroads requires us to take in payment of this debt $2,000,000 a year in semi-annual payments, and at the end of each period of six months we are required to add the accrued interest to the principal and upon both as the new principal sum add interest at the end of the next period of six months, and so on to the end.

According to a calculation which I have had made by an expert, each company would pay the debt, by this contrivance and by the accumulated and compounded interest, within a period short of twenty years. I think I am not mistaken at all, and I can afford to state that the debt will be paid within a period little exceeding twenty years, and it will be paid with less than one-third of the sum of money which the Government of the United States will have paid out at the maturity of these bonds, with the interest thereupon, not counting the interest on the interest paid by the Government. In the manner in which the account is stated by the Committee on Railways

there can be no difficulty at all in each of these companies getting free from its debt; but what will become of the people who have to sustain the burdens to pay it? How much anguish and pain is the Senate of the United States willing to add to the already aggravated sufferings of the people for the purpose of raising money to pour into the lap of this rich and overgrown corporation?

It is just a case of this kind: If I should owe a gentleman $100 and I should come to him and say "this note is not to be due for a long time; but the interest is payable upon it every six months; I will hand you a ten-dollar bill and I will ask you to take that ten-dollar bill and make the best use you can of it, and at the end of every period of six months you compute the interest on that, and you will add the interest to the sum at the end of the next six months, you will compound it again and again, and when that ten-dollar bill has succeeded in paying my debt, I wish you would send me my note receipted," that is what I would call "a new way to pay old debts." We could pay the Government debt in that way without any difficulty if we could only get the plan to work.

Take it from end to end, no chapter in history is so filled with insolent exactions and unconscionable injustice as that which records the less than ten-years' life of this great American outrage.

In recurring to the history of these railroad corporations, while I am bound to admit that they have caused a vast improvement in the commerce of the United States and in the facility of intercourse between the citizens of distant parts and the very widest borders of the country, and while I am not disposed to underrate by any means at all the advantages which they have contributed to bestow upon the country, I think that every American citizen would almost prefer that the road should never have been built than that it should have been the means of inflicting upon the history of this country the disgrace which has been brought upon it. Witness the graves filled with distinguished and brilliant men who had led honorable and elevated lives and careers in this country up to the time that the Credit Mobilier came around and enfolded them in its arms of death. They have gone in shame and disgrace to their graves, from which even the hand of mercy cannot recall them; and these men have been but few, very few, perhaps the most distinguished few of a large number of men who have felt the corrupting power and influence of this great corporation.

I really think that scarcely any of its exactions and demands have been more—I was about to say insolent—I will not use the word in reference to a committee or any gentleman who advocates the measure, but in reference to those men who owe the debt to the country and ought to pay it, than this one which is now under consideration. I think that those gentlemen upon the floor of the Senate who are contemplating new schemes of transcontinental railroad construction should be thoroughly aware of all the powers that Congress may possess to control such institutions before they give their votes to any more of these immense establishments.

I think we have presented to our consideration perhaps the gravest duty that we shall encounter for a long time as well in looking over our powers to regulate the corporation or corporations already in existence, as to measure our strength in the contest that we must have with them in time to come.. If the doctrine is to be established by the Congress of the United States that the granted chartered powers of a corporation created by an act of Congress, after they become valuable either as property or as covers for property or sources of emolu-

ment, are beyond the power of Congress to reclaim, amend, alter, or correct them, then let us never again commit the people of the United States to the clutches of one of these arbitrary, despotic, and grasping corporations, for if they go there they go to a certain destruction.

Mr. MITCHELL. Mr. President, I wish to speak on this bill, but I would prefer to go on to-morrow if agreeable to the Senate. There is an appropriation bill that the Senator from Minnesota [Mr. WINDOM] desired to call up.

Mr. EDMUNDS. I move, with my friend's permission, that the bill under consideration be laid aside informally to be the unfinished business to-morrow against everything else, and that the appropriation bill be taken up.

The PRESIDING OFFICER. (Mr. THURMAN in the chair.) Is there objection to that? The Chair hears none. The railroad bill is laid aside informally, to be the unfinished business for to-morrow morning, and the Senate will proceed to the consideration of the appropriation bill which the Senator from Minnesota gave notice he would call up.

Mr. PADDOCK. As the chairman of the Committee on Appropriations does not seem to be present I will ask the Senate to resume the consideration of Senate bill No. 395.

Mr. ALLISON. The Senator from Minnesota will be here in a moment. In his absence I move to take up House bill No. 3102.

The PRESIDING OFFICER. That bill will be regarded as before the Senate as in Committee of the Whole.

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MARCH 9, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 1) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. MITCHELL. Mr. President, the questions presented for the consideration and determination of the Senate by the two bills now under consideration are of no ordinary character. On the contrary, they are of vital interest to the Government, involving matters of pecuniary account with the Treasury of over $[illegible]. It is therefore a subject that well challenges the most serious attention of every Senator. From every standpoint, as every phase, as lawyer, as lawgiver, as jurist, as patriot, as present action, and as future responsibilities and restrictions, as affect upon the nation's treasury, as relations of past legislative action, as bearings in contracts between Government and citizens, as influence in vested rights and obligations assumed, and as stands as affected by legislative reservations in the congressional enactments and as and from which the whole subject of present controversy emanated, should, and I hope will, receive the most serious [illegible].

As a question that involves as does this one the amount of means

whereby the enormous sum of over $150,000,000 may be saved to the Treasury of the United States embarrassed as is the Government in this instance by prior liens, adverse decisions of the highest courts in the land, and divers other complications of equally grave character, is one that imperatively calls for the exercise of the very highest order of statesmanship. That in a case so complex in its very nature and of such immense magnitude there should be differences of opinion as to the methods that should be adopted and the ways and means that should be incorporated into law, is not by any means strange. The very fact that the members of the great law committee of the Senate, composed, as is the Judiciary Committee of this body, of Senators pre-eminent in the profession of the law, should, after wrestling in little less than mortal agony over this great subject for four months and nineteen days, be unable to agree as to the true extent of power which Congress can rightfully exercise in reference to this question, and which it *ought* to exercise in point of practical economy and business sense, must conclusively show, at once and to all, the gravity of the questions involved, whether regarded from a constitutional or economic stand-point. Nor is it less strange that upon the one great fundamental proposition, namely, the imperative duty resting upon Congress to take immediate steps by the prompt exercise of whatever power we possess, our action being molded in the light of reason and justice and right and fair dealing and financial honesty and financial sense, to guard the Treasury of the United States by the creation of a fund for the liquidation of this enormous indebtedness, there should be no difference of opinion whatever. Upon this proposition we are all united; in reference to this there is no diversity of thought.

This being so, we have before us two bills, both having in view the same purpose, each looking to the same common end; that purpose being the preservation of the rights of the Government, the final reimbursement to the Government of the loan made by it to these corporations in aid of the construction of a transcontinental highway.

Having said this much, I pass directly to the subject before us. The amount of bonds issued by the United States upon the lines now comprised in the Central Pacific Railroad under what are known as the Pacific Railroad acts of Congress, were the Central Pacific Railroad Company of California, on main line from Ogden to Sacramento, $25,885,120; the Western Pacific Railroad Company, on 123½ miles, from Sacramento to San José, and which was consolidated with the Central Pacific Railroad Company in conformity with the laws of the State of California, June 22, 1870, $1,970,560; making a total to what is now the Central Pacific Railroad Company of $27,855,680. The subsidy in United States bonds loaned to the Union Pacific Railroad Company was $27,236,512.

These bonds mature on an average about the year 1898. The Government is and has been paying the interest thereon. The Supreme Court of the United States, as stated by the honorable Senator from Illinois [Mr. DAVIS] the other day, and who was an honored member of that court when the decision was made, has decided in the case of The United States *vs.* The Union Pacific Railroad Company (1 Otto, 72) that the Pacific Railroad Companies are not bound to pay or refund the interest to the Government before the maturity of the principal of the bonds issued to them by the United States. There is therefore, under the Pacific Railroad acts of 1862 and 1864, as construed by the Supreme Court of the United States, no part of either principal

or interest of these bonds due or payable from the railroad companies to the Government until the maturity of the principal of the bonds, save and except an amount equal, as the same may accrue, to the one-half of the Government transportation account, and 5 per cent. on the net earnings of the company. And no present security for any part of this vast amount of money when due, save a second mortgage on the rights and property of the companies, subordinate as it is to a prior lien of an amount equal to the principal of the Government bonds and such annual amount as may arise from the one-half of the cost of Government transportation, and 5 per cent. of the net earnings from the date of the completion of the road.

Considering, therefore, the vast sum total of this indebtedness when it matures; amountity, as it will at maturity, after crediting all payments the companies are bound to make under existing laws, to about $120,000,000; and considering the very unsatisfactory, insufficient, and precarious security for its liquidation when it does mature, whatever may be the limits or non-limits of congressional power in the premises, it occurs to me, inasmuch as doubts of the gravest character must and do unquestionably exist as to the question of jurisdiction in Congress to compel arbitrary terms of settlement, it becomes of paramount importance to the interests of the Treasury, that if any measure can be devised that will by any reasonable possibility meet with the approval and co-operation of these companies and in the end cancel this indebtedness by the payment to the Government of every dollar, principal and interest, that it should at once receive the legislative sanction of Congress. It is wise, and just, and right, that we should go to the extreme limit of undisputed legislative power in compelling these corporations to reimburse the Government for its munificent aid in the construction of this great transcontinental highway. It is no more than the dictate of self-protection, of wise statesmanship, of simple justice to the Treasury, and the whole people, that we should step to the very verge of our unquestioned constitutional authority in the creation of methods whereby the interests of the Government shall be protected against the inevitable results of what perhaps may be considered by many as hasty, improvident, and unwise legislation fourteen and sixteen years ago.

To do this is to hasten the end of a controversy that for the past ten years has been a disturber of legislation in Congress and in State Legislatures, and a standing obstruction to speedy justice in other cases in our forums of justice, State and Federal; a controversy wherein the Government has almost invariably come out second-best, as will be seen by a reference to two instances. The Government claimed that interest on the United States bonds was payable by the companies to the United States, as the same was paid each six months to the bondholder. The companies contended that the interest was not due until the principal of the bonds matured. Congress and the Treasury Department took the side of the Government as against the companies. The companies appealed to the common arbiter, the Supreme Court of the United States, and what was the result? The claim of Congress and the Treasury Department went down before the unanimous decision of that court as unfounded and one that could not be maintained.

Again, the Government insisted that the 5 per cent. of the net earnings should be computed from the date of continuity of rail between Omaha and San Francisco. The companies denied the claim and again appealed to one of the circuit courts of the United States, insisting as they did that the payment of the 5 per cent. should not

commence until 1874, at which time the road was accepted as completed by the Government, and again the court decided against the claim of the Government, and the railroad companies triumphed and with fresh courage went forth, I doubt not, determined to dispute to the end every inch of disputable ground whenever they conceived their rights under former guarantees of the Government to have been infringed. And who can blame them, I inquire, for prolonging a controversy in reference to what they claim to be their vested rights so long as the highest courts in the land decide unanimously in their favor.

For Congress, therefore, Mr. President, in its attempts to protect the Treasury by the creation of a sinking fund, to tread upon seriously disputed ground of constitutional power will, in my humble judgment, so far from accomplishing its purpose, but serve to perpetuate in these halls a controversy which year after year will obtrude its hydra-headed presence at every session and to the serious obstruction of public business; whose Briarean arms will beat back year after year the necessary legislation of the land, while your courts from San Francisco to Boston will not be free for the next generation from the presence of these giant suitors.

If it be true that Congress has the power, clear and indisputable, to compel these companies to conform to such terms as we may dictate, and this exercise of power is one that the courts will unquestionably sustain and enforce by judicial decree, and such exercise is not in contravention of the principles of natural justice and equity and fair dealing, then unquestionably there should be no hesitation upon the part of any Senator to vote such a proposition. But if this is not so, if this power is one full of doubt and uncertainty, one that may lead to conflict of opinion among judges and to diverse decisions of courts, then by its exercise we not only fail to accomplish the desired end, but instead give vitality, longevity, and magnitude, if not immortality itself, to the greatest judicial, administrative, and legislative controversy of the age.

If then, Mr. President, we can secure the passage of a measure for the creation of a sinking fund that will at the maturity of this indebtedness either pay the whole debt, principal and interest, dollar for dollar, or do that which is equivalent, pay at maturity dollar for dollar over two-thirds of the whole amount or over $100,000,000, and amply secure the payment of the balance with interest thereon payable semi-annually—and this is precisely what the substitute which I favor proposes—with a reasonable prospect of securing the assent and co-operation of the companies, thus putting an end forever to this great litigation, will it not, I inquire, be infinitely better for the Government, better for the Treasury of the United States, better for all concerned, than it would be to trench upon constitutional ground of doubtful character, enact a measure for a sinking fund that will encounter continued and prolonged litigation and controversy in Congress, in the administrative departments of the Government, and in State Legislatures; with no certainty as to the result, or uniformity of decision; or I will add, even though a result favorable to the Government could after years of litigation be expected in the end?

And this leads me to speak of the two measures proposed—the one reported by a majority of the Judiciary Committee, the other unanimously by the Committee on Railroads, the latter of which is now pending as a substitute for the former by the motion of the honorable Senator from Ohio, who reported it, [Mr. MATTHEWS.] I shall speak of them separately, and first as to the bill reported from the Commit-

tee on the Judiciary. And here I must be permitted to state that no Senator on this floor not a member of that committee, much less one so humble as myself, ought to attempt to criticise a measure reported by that committee in reference to the legal propositions involved without the utmost diffidence and most profound respect. I am not insensible to the fact that the chairman of that committee stands, and justly too, at the American bar as well as in the American Senate, conceded by all, as one of the clearest, ablest, and most profound of the constitutional and statutory lawyers of his time. Nor am I unmindful of the fact that able, experienced judges and profound jurists are his companions and co-workers on that committee; and knowing this, I would hesitate long before joining issue with their report were it not for the fact that issue has already been joined in judgment and opinion, as I am advised not only by very many able lawyers of the Senate *not* members of that committee, but also by others whose ability as constitutional and statutory lawyers no one will question, who *are* members of that committee.

While, therefore, Mr. President, I favor the creation of a sinking fund that will fully indemnify the Government dollar for dollar for the $150,000,000 and over that will be due from these companies about the year 1900, I oppose the measure reported from the Judiciary Committee; first, because I believe it to be a measure clearly beyond our constitutional power to enact; and, second, because I believe it to be one, even had we the power to pass it and compel its enforcement against these companies through the judicial tribunals, that is unjust, oppressive, and contrary to the true spirit of our institutions, and above all one that is not in the true interests of the Government; a measure that the companies could, if disposed, by a manipulation of their various accounts of operating expenses, construction accounts, accounts with branch roads, &c., evade and render inoperative to a very great extent in so far as any good results to the Government are concerned.

But to the principal objection, and first as to the question of power. By the acts of 1862 and 1864, known as the Pacific Railroad acts, the United States said to these companies in substance and effect, You are authorized to build a railroad across the continent from the Missouri River to the Pacific Ocean. You are authorized to issue your bonds to an amount per mile equal to an amount the Government will issue in your aid. You can mortgage your road and property to secure the payment of the principal and interest of your first-mortgage bonds. The Government will aid you with its bonds to a large amount and will pay the interest semi-annually. These bonds and accrued interest shall at the maturity of the principal of the bonds be refunded to the Government by the companies. The only provision that the companies by this legislation were called upon to make for the liquidation of these advances by the Government, was the one-half of the Government transportation account, and 5 per cent. of their net earnings from the time of the completion of the roads. The road was to be built within a certain time and upon certain conditions, the Government was to have priority of the use of the same, and it was to be kept in "repair and use," and they were not to permit it to remain "out of repair and unfit for use."

The companies accepted these terms and built the road, several years prior to the time fixed for its completion in the charter; and it is not contended, I believe, that they have not maintained it in all respects, in so far as these questions are concerned, in accordance with the terms of the charter. Now, then, what is the proposition of

the bill of the Judiciary Committee? It is, in brief, as I understand it, a proposition to compel these companies, without their consent, first, to submit to a retention by the Government of the whole amount of money earned by them for Government transportation, the one-half of which is to be applied at once to the payment of interest paid and to be paid by the Government on the bonds issued in aid of the companies, and the other half to remain in the Treasury as a part of the sinking fund—which, by the way, is in direct conflict with the act of 1864, under which these companies built their road, which provides that one-half of the transportation account shall be paid over to the companies; second that these companies shall pay, respectively, into the Treasury of the United States toward such sinking fund, semi-annually, such sum as shall be necessary to make the 5 per cent. of the net earnings of its road payable to the United States under the act of 1862, and which is still to be applied to interest as heretofore; and the whole sum earned by them respectively as compensation for services rendered for the United States, together with the sum so paid in every six months, amount in the aggregate to 25 per cent. of the whole net earnings of such companies, respectively.

And, third, the net earnings are defined by the bill to mean such amount as shall remain after deducting from the gross amount of the earnings the necessary expenses actually paid within the year in operating the road and keeping the same in a state of repair, and also the same paid by the companies respectively within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest on any other portion of their indebtedness.

These are the principal salient points of the measure. There are other most extraordinary, and as I think I shall be able to show in some respects incongruous sections and solecistic provisions to which I shall attract attention as I shall proceed with my argument. For the present I confine myself to the three principal points named in considering the question of the power and right of Congress to pass the bill reported by the Judiciary Committee. That this bill proposes in these essential particulars to make a new contract with these companies without their consent, it seems to me is too plain for serious argument.

It is *not* a mere exercise of legislative control over the earnings or assets of a corporation for the benefit of its creditors where the Legislature from which the corporate existence sprang is not bound by the fetters of its own previous stipulations and solemn agreements. It is another and entirely different case. It increases the amount of the annual payments; it contravenes the terms of the original contract between the Government and these companies by withholding the whole instead of the one-half of the moneys earned for Government transportation. It virtually sets aside the decision of the Supreme Court of the United States in providing in effect for the payment of interest years before it is due. My friend from Michigan makes a note of that assertion. I admit it does not provide in terms, but it does provide in effect, just as I have stated. It impairs the obligation of the original contract in various ways. It encroaches upon the rights of the prior creditors and bondholders of the companies in taking possession by force of law of the assets to which they have a right to look not only for the payment of their annual interest but for the ultimate redemption of their bonds at maturity, and which assets or earnings they have a right to expect shall only be controlled, managed, and disposed of by their debtors or with their consent.

Again, it invades the sanctity of judicial domain unwarrantably as I believe with the strong arm of arbitrary legislative power and by legal enactment attempts to declare what shall constitute the net earnings, not of a corporation to be created——

Mr. CHRISTIANCY. For the future only.

Mr. MITCHELL. I am coming to that. I will say to my friend from Michigan, not in reference to matters arising out of future contract and future operations under a new contract, but of a corporation created sixteen years ago and in reference to corporate operations carried on in pursuance of a contract *in esse* made between the Government and these companies by solemn legislative enactment.

Admit, as suggested by the gentleman, that the provisions of the Judiciary Committee bill only apply to the earnings in the future, that does not help the matter by any manner of means; it does not change the principle. It is therefore, in my judgment, and in the judgment of the committee of which I happen to be chairman, a forced sequestration of the private property of a corporation in payment of a debt not due, either principal or interest, for twenty years to come, not only without its consent but in plain derogation of the rights of other and preferred creditors, and creditors so preferred not at the mere will of the corporations themselves but by the solemn act of the legislative and executive branches of the Government in 1864.

No order of sequestration, in my judgment, of any military commander during the late war, invaded the domain of private right with more aggressive assumption than does this measure. It not only trespasses upon the rights of the prior bondholders in one respect by depriving their debtor of the management of its own funds, but gives such bondholders unwarrantable preferences over the Government in another respect, in the distribution of the fund, but by excluding from consideration in the determination of what are net earnings any interest paid to the innumerable other creditors of the companies, it diminishes the means for the payment of these principal debts and tends inevitably to postpone their payment, and in this manner affects injuriously the rights of creditors both here and for aught I know in other lands, who have contracted with these companies in various ways without any knowledge or expectation of this proposed legislative sequestration of the property of their debtor; and upon the credit and status of which companies and their financial condition, responsibilities, and powers, as fixed by the terms of the acts of Congress of 1862 and 1864, and their acceptance of the same and the rights that had grown up thereunder in favor of such companies, their credit was extended to them.

It is therefore, in short, a proposed legislative confiscation of private property under the pretense of creating a sinking fund to liquidate at maturity a now immature indebtedness. Can such a proposition stand in law? Will it successfully resist the application of sound principles of legal jurisprudence when applied to it by the court from the bench? I apprehend not; and in addition to these objections, there is still another of grander import, of weightier interest and more far-reaching in its baneful consequences, as affecting the credit of the nation itself, and that is, in my judgment it tramples with impunity upon the faith of this Government, which in 1862 and 1864 was through the solemnity of the highest exercise of legislative power voluntarily pledged to these companies.

That Legislatures, and Congresses, and courts, if not restricted by the very terms of the charter, or by rights that have lawfully vested in the rightful exercise of corporate franchises under the terms of

the charter, may exercise a certain control over the earnings of corporations for the preservation of such corporate earnings and the protection of the rights of creditors, there can be doubt. Such an exercise of such a power in such a case is but an incident properly attaching to all corporate rights, the enforcement of which is reserved to Legislatures and courts under well-recognized principles of legal jurisprudence applicable to corporate existence, but like all other reservations of power, whether implied or expressed, it may be restricted, limited, or altogether suspended or absolutely destroyed; not only by the express or implied terms of the charter itself, under which sacred rights of property have vested, and solemn obligations have been created, but by the contract itself.

In this case, Congress, in the acts of 1862 and 1864, after defining the character and extent of the aid it gave these companies, namely, certain bonds and interest thereon, no part of which with certain exceptions named should be repayable to the Government by the companies for thirty years, proceeded to define the character and extent of the obligations of the companies with reference to the cancellation of this loan. The maximum limit of these obligations prior to the maturity of the whole debt was the payment to the Government of one-half of the earnings for Government transportation and 5 per cent. of the net earnings from the date of the completion of the road. These items, and these *alone*, by the terms of the original contract were to be contributed by the companies toward the redemption of this loan until the loan itself matured.

Does not this, then, constitute a clear limitation of the power of Congress and upon the right of Congress to compel the payment of a greater sum—a sum equal to 25 per cent. of the net earnings—under the pretense of creating a sinking fund? But what is the answer to this argument? I shall endeavor to state it fairly and give to it the benefit of all that can be said in its favor. It is that the reservation in the Pacific Railroad acts of the right to alter, amend, or repeal is itself a part of the original contract, and that therefore, under such reservation, Congress may impose new terms and conditions of the contract; and that, although rights of property may have vested under the terms of the original charter, although obligations may have been created, still the right to alter, amend, and repeal being part of the law of the original contract, as it is claimed, a part of the contract itself, that therefore new terms and conditions may be imposed notwithstanding the fact that they may impair or even utterly destroy what under other circumstances would be vested rights and contract obligations.

I know my friend from Michigan undertook to draw a fine distinction between such rights as these and rights that were vested as rights of property, and he instanced a case. He said if the companies had used the moneys they earned and invested the same in lands and received a title to the lands, then that would have become vested property.

Mr. CHRISTIANCY. Or so of personal property either.

Mr. MITCHELL. Yes, the Senator went that far, including lands and personal property; but he neglected to state that money or the right to money, or the right to earn money, the right to reduce it to possession and to have it and own it, was as much property as land or as personalty; and while according to his proposition a right would be a vested right if it was a property that was acquired by the earnings of these companies either real or personal, he failed to apply his logic or his law to the right to money itself, which is as much property as I conceive as land or personalty or goods of any kind.

It is upon this theory, and this alone, as I understand the honorable Senator from Illinois, [Mr. DAVIS,] to whom was assigned the duty, in the first instance, of presenting to the Senate the legal aspects of this case, and the legal basis upon which the bill of the Judiciary Committee is to rest, fixes his right to pass this bill; although he *implied* by his remarks, as I will show—and a clause or two in the report of the committee assumes the same position, and I will give this attention further on—that even in the absence of these terms, of reservation in the Pacific Railroad acts, the power to pass this bill would be complete under the sovereign legislative power of Congress, and this is the view advanced generally by those favoring the Judiciary Committee bill.

I must except from this, however, the argument made by the honorable Senator from Alabama [Mr. MORGAN] yesterday, because he, it will be remembered, ignored this theory of the Judiciary Committee. He said that the Government of the United States could not reserve to itself in the passage of the law a right to change that law, but that it had the right independent of any reservation, over and beyond any reservation in the charter. The argument of the honorable Senator from Alabama yesterday, as I understood it, and I listened to it pretty carefully, ignored the whole theory presented by the Committee on the Judiciary. But, as I have said, so far in the argument, with the exception of the argument made by the honorable Senator from Alabama yesterday, the case is rested mainly, if not solely, on the reservations in the original acts of the right to alter, amend, or repeal.

With great respect, and not without much diffidence, I feel compelled to dissent from this view, both on principle and authority. I deny that these words of reservation confer any authority whatever upon Congress, to strike down in the least degree, much less arbitrarily, the terms of the original charter, where those terms have been accepted by the companies, and by an exercise of the corporate powers conferred have ripened into vested rights and grown into contract obligations, and what constitutes vested rights and contract obligations I will discuss later. While I accept as law the several decisions of the Supreme Court of the United States and of the State courts quoted by the honorable Senator from Illinois, and the honorable Senator from Michigan, [Mr. CHRISTIANCY,] and other Senators, in support of their theory, I deny that their application in this case will enable Congress rightfully to wipe out of existence individual rights of property that have vested in pursuance of law and upon a valuable and sufficient consideration, or to even so legislate as to impair these rights to any extent whatever; which rights of property are, in their sacredness, above and beyond the reach of even the strong arm of sovereign legislative power—rights that so far from being constantly imperiled, even in the slightest degree, by the caprice of Congress or courts are by every consideration of justice and right, by every just system of jurisprudence, in all lands and in every age, entitled to their protection and vindication.

That the power of Congress to alter, amend, or repeal any law within certain limits passed by a former Congress is inherent and indisputable, whether there be an express reservation of that right or not in the law itself, no one, I presume, will deny. There are limits, however, to this exercise of power, and those limits are, that rights vested under such law and obligations created in pursuance thereof shall not be impaired or destroyed. The power of one Congress to bind its successors for all time by a mere failure to insert an express reservation

of the right to alter, amend, or repeal, is a proposition that could not be maintained for a moment. The power to repeal within certain limits is one that needs not to be perpetuated by special reservation, for it is a power that is inherent in the legislative department of government, and one that never dies.

This being so, it may well be doubted whether the express reservation of this right confers any greater power upon Congress than it otherwise would have by virtue of that ever-living, never-dying principle of government that prevents one Congress from binding the representatives of all posterity by any law which to them may seem unjust, unwise, or oppressive. I will say right here, in addition, that if the words contained in the reservation in the Pacific Railroad acts are to give to Congress any greater power than it would otherwise possess under what may be said to be the sovereign power of Congress, then what must that power be that is added to the Government by these words of reservation? It could only be the right to go a step further and interfere with vested rights or impair contract obligations, and most certainly the able lawyers of the Judiciary Committee will not contend that they go that far, although that is the end to which their law and their logic inevitably leads.

But I desire to call attention to another principle in our jurisprudence equally honored, equally immortal, equally just, being that which fetters the hands of future Congresses and prevents them from in any manner by legislative repeal invading the sacred precincts of vested rights or from impairing or destroying the obligations of a contract. But whatever additional power, if any, the Government may possess by reason of express words of reservation, it has it in this case, and by the construction that should rightfully attach to these words Congress should be governed. And in determining the effect of this reservation I assume, for the present, for the sake of the argument, the position assumed by the honorable Senator from Illinois, namely, that the reservation in the act of 1864, being the last expression of the legislative will, and the two acts of 1862 and 1864 being construed *in pari materia*, that therefore the reservation as to both acts is to be construed in the light of the words used in the act of 1864, which are without limitation, and which read:

> That Congress may at any time alter, amend, or repeal this act.

While I agree the two acts should be construed *in pari materia*, I do not think, as a matter of fair statutory construction, it follows by any manner of means that the reservation in the act of 1862, limited and qualified as it unquestionably is, must necessarily be considered as blotted out by the reservation in the act of 1864 merely because the latter is the last expression of the legislative will. On the contrary, construing the two acts *in pari materia*, as I concede they should be, would it not rather follow as a necessary, logical, and legal sequence that the reservation in the act of 1864, which standing alone is unlimited in terms, would be limited and controlled by the conditions and restrictions in the act of 1862, namely, by the words:

> To promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, alter, amend, or repeal this act.

This I believe to be the correct construction, but for the sake of the argument, I admit the construction given by the friends of the Judiciary Committee bill, namely, that the reservation is in terms uncon-

ditional, and unrestricted, and shall proceed to inquire what is its effect.

Does this reservation of power in statutes, I inquire, enable Congress at its sovereign will to strike from the statute-books of the country any and every law in existence in which the reservation is made, and in so doing to obliterate vested rights and loosen existing obligations that may have rightfully accrued or been legitimately contracted in virtue of or in pursuance of such legislation; or to even so legislate as to affect these rights and obligations to the least possible extent; because the extent to which they may be affected, whether great or small, cannot affect the application of the principle. No; the claim of the Judiciary Committee does not, as I understand it, ostensibly go to that extent, although in effect it does. Such a doctrine, even in the jurisprudence of despotic governments, would be regarded as monstrous. Most assuredly such is not the office of such a reservation in statutes. On the contrary, it simply confers the power on a future Congress to alter, amend, or repeal any law in which the reservation exists that has been enacted by a preceding Congress; provided always that in such repeal vested rights are not destroyed or the obligations of the contract impaired. The law may be abrogated, but the vested rights of property under the law must not be affected or disturbed by such repeal.

The franchise may be repealed, the charter may be revoked, but the rights that have vested by a legitimate exercise of the franchise, or obligations, which have legitimately been created under the charter, are by every consideration of law and justice, and equity and right, both legal and natural, above and beyond the reach of the repealing power. Any other construction would imply the right to divest a corporation of property legitimately acquired under a law authorizing it to acquire it while such law was in full force and operation. I do not deny that under this reservation, or even without it, it is an incident to every law under which a contract is made, or by which one is made, that it may be amended or repealed at the will of the Legislature; but I do most emphatically deny that in every contract made under a law that is repealable, the power to repeal is one of the conditions entering into the contract, thus rendering the contract itself repealable to the injury or destruction of rights that may have grown out of it.

Such a doctrine, followed to its legitimate conclusions, would place the construction of all corporate contracts and the annihilation or confiscation of all corporate property at the will of the Legislature. The law by which or under which a contract is made is one thing, and may under this reservation of power be legitimately swept from the statute-book; but the contract made under the law in all its executed terms and conditions is quite another and different thing, and is, and ought to be, far above and beyond the touch of legislative power. A law tendering a contract, or under which a contract may be made by a corporation, may, if not accepted, remain a dead letter upon the statute-book for ages, just as the act of 1862 might have remained until to-day a dead letter had its terms not been accepted by these companies and its provisions acted upon. But nevertheless it would have been as much a law, no more, no less than it is to-day, and under the reservation liable to absolute and unconditional repeal.

But in that case no contract would have been created, no obligation incurred, no right vested. But, the propositions contained in the law having been accepted by the companies, a contract was at once created from that date, and not from the date of the law; and

while it is no part of the law itself, it is a legitimate result of an execution of the powers conferred by the law; and while you may alter, amend, or repeal the law, the contract cannot be interfered with nor can its terms be changed by amending the law in such manner as to impose new or increased liabilities upon parties to the contract.

Such, Mr. President, I believe to be the true construction which, on every principle of justice and right, should be placed on the words "alter, amend, or repeal," as used in the Pacific Railroad acts; and such also, I insist, is the construction placed upon such reservation of power by the very authorities that have been quoted in support of the right to pass the Judiciary bill. And I propose now briefly to examine these authorities as quoted by the honorable Senator from Illinois and the honorable Senator from Michigan in their very carefully prepared speeches on this subject.

And here it should be borne in mind that the controversy over this question of power is not so much one as to what the law really is, as it is as to the application of the law as it is conceded by all to be to the particular facts of each particular case. For instance, in all these cases decided in State courts, and in the Supreme Court of the United States, where the question involved was as to whether a State law impaired the obligation of contracts, there could, as a matter of course, be no room for dispute as to the absolute want of power in a State Legislature to pass such a law, from the fact that the States are positively inhibited in this regard by a provision of the Constitution of the United States. But the question has invariably been whether, as a matter of fact, the State law in dispute did, or did not, under the special circumstances of the particular case under consideration, impair the obligation of a contract, or rather, to state the issue more correctly, whether the state of facts in a particular case constituted in law such a vested right of property or created such contract obligation as Legislatures have not the power to impair.

In all these cases, therefore, quoted by the learned Senators from Illinois and Michigan, namely, the case of The Attorney-General *vs.* The Railroad Companies, 35 Wisconsin; The Commonwealth *vs.* Essex Company in Massachusetts, 13 Gray, 238; In Holyoke County *vs.* Lyman, 15 Wallace, 500; Miller *vs.* The State, 15 Wallace, 498; Tomlins *vs.* Jessup, 15 Wallace, 454; and the two recent cases in 4 Otto, of Peck *vs.* Chicago and Northwestern Railroad Company, and Chicago, Milwaukie and Saint Paul Railroad Company *vs.* Ackley, upon which so much stress is laid, in support of the authority to pass the bill reported by the Judiciary Committee, the question was not——

Mr. CHRISTIANCY. Will the Senator allow me to say——

Mr. MITCHELL. I will yield at the end of the sentence. The question was not as to the power of a State Legislature to pass a law impairing the obligation of contracts, because upon that there could be no two opinions; but the question invariably was, Did the particular law in question as a matter of fact so trench upon the terms of existing contracts, so invade the domain of existing vested rights of property as to in fact and law impair the obligation of such contracts, or amount to an invasion of the rights of property? Or rather did the facts as presented by that case—and I now refer to the Wisconsin transportation case in fourth Otto—show that the corporation had such a right to fix its own rates of transportation and freight in the future as to constitute in it such a vested right of property, such a contract with the State, or did those contracting with such corporation in view of the laws under which the corporation was created, possess such contract obligations as could not be impaired by the

Legislature under the reserved power in the constitution of that State to alter, amend, or repeal any law under which a corporation was created?

Mr. CHRISTIANCY. Will the Senator now allow me to interrupt him?

Mr. MITCHELL. Yes, sir.

Mr. CHRISTIANCY. The Senator cites me among others as having quoted a certain case from Massachusetts, the case of the Essex Company and a certain case in Wisconsin. I cited no State report.

Mr. MITCHELL. I ask pardon of the Senator from Michigan. He is undoubtedly correct. I was led into the error. The Senator from Illinois [Mr. DAVIS] quoted those cases.

Mr. CHRISTIANCY. The Senator from Ohio [Mr. MATTHEWS] cited particularly the Essex case.

Mr. MITCHELL. The Senator from Illinois—I cannot be mistaken about that—cited all the cases, every one of them, which I have quoted. I was under the impression that the Senator from Michigan had cited the same cases.

Mr. CHRISTIANCY. I do not remember how that was in regard to the Senator from Illinois, but I did not.

Mr. MITCHELL. Of course as the Senator says he did not cite those State cases, I stand corrected in that particular; but the Senator from Illinois did cite, as I have stated, every case to which I have called attention. I now refer to the transportation case in fourth Otto that the Senator from Michigan referred to, and I am now going to comment on that. The Senator from Illinois and the Senator from Michigan both appeared to rest their whole case upon the two or three cases reported in fourth Otto, as I understood them.

Mr. CHRISTIANCY. Then, Mr. President, the Senator will allow me to say that he is entirely mistaken. I argued the case upon principle and said that if I were arguing the case in the Supreme Court I should not cite a case. I then went on to say that according to those principles the court had decided; that is all.

Mr. MITCHELL. Yes, the honorable Senator from Michigan laid down a rule, advanced a theory upon which he claimed that Congress had the right and the power to pass the bill reported by the Judiciary Committee, and then in support of that theory he cited the Wisconsin cases as reported in 4 Otto.

Mr. CHRISTIANCY. Undoubtedly. That is true.

Mr. MITCHELL. Why did he cite them? He cited them because they were decisions of the Supreme Court of the United States, and because he sought to have the Senate understand that the doctrine of the law as promulgated in those cases by a proper and legitimate application would sustain the bill of the Judiciary Committee. That is what the Senator from Michigan claimed. I do not wish to misrepresent him, and will not if I know it. If I am wrong at any time I ask that he may correct me, as he did correct me just now.

This was the question in the Wisconsin case referred to, as I stated it. It was simply a question whether the Legislature could, under the reserved power in the constitution of the State to alter, amend, and repeal, fix the *maximum* of *future* passenger and freight charges, and *not* a proposition such as is presented by the bill of the Judiciary Committee, which is in effect to sequester and appropriate to the use of the Government in payment of a debt not yet due the absolute earnings of companies which are the result of a business conducted, in so far as its charges are concerned, in strict accordance with the terms of its charter; and which earnings have been reduced to pos-

session by the companies, and become as to them vested property rights.

Mr. CHRISTIANCY. I should like to understand the Senator, but I will say nothing if it interrupts the Senator at all.

Mr. MITCHELL. Not at all.

Mr. CHRISTIANCY. Does the Senator claim that the bill of the Judiciary Committee takes hold of the earnings which have already been received and realized, and that it does not apply to the future?

Mr. MITCHELL. I do not claim any such thing.

Mr. CHRISTIANCY. I thought the Senator did not, but his language implied it.

Mr. MITCHELL. I understand the bill of the Committee on the Judiciary perfectly and the position of the honorable Senator. I say that the bill of the Judiciary Committee undertakes by the strong arm of legislative power to lay its hands upon money hereafter to be earned, and which the committee admit that the companies in a proper exercise of their corporate franchises have a right to earn and reduce to possession. That particular kind of property the Judiciary Committee proposes by this law to take possession of and hold in payment of a debt which it is conceded is not due for the next quarter of a century. That is what I say.

The case, therefore, as presented by the facts and the principles of law involved, is *not*, as is claimed, *alter idem* to the case presented by the bill of the Judiciary Committee; and in most, if not all the cases quoted, the courts held that there was no such invasion of the obligation of contracts as would render the act of the State Legislature obnoxious to the constitutional inhibition against States passing any law impairing the obligation of contracts.

The great difficulty, therefore, is not so much what is the power of the Legislature or of Congress in these respects, but rather what in *fact* and *law* in any given case constitutes a right or obligation that cannot be impaired or destroyed by the legislative power under a reservation of a right to alter, amend, or repeal. And a careful comparison, therefore, between the character of the rights which it was claimed were affected in the Wisconsin transportation cases by the legislative enactments brought in question in those cases and the character of the rights which are assailed by this bill, will at once conclusively show that they are not by any means parallel, and that the application of the law in the one case is not necessarily or at all the application in the other case.

The question in the Wisconsin case, as held by a majority of the court, and which by the way was earnestly and ably disputed by Justices Field and Strong, was simply this: that where a corporation had been chartered under a *State law* which authorized it to demand and receive such sum or sums of money "for the transportation of persons and property as it shall deem desirable;" the Legislature could, by a subsequent act, under a reservation in the constitution of the State to the effect that "all acts for the creation of corporations within the State may be altered or repealed by the Legislature, at any time after their passage," pass a law fixing the limits of fare for the transportation of persons, classifying freights, and prescribing the maximum rates therefor.

The Supreme Court of the United States held by a majority of its judges that such a law could rightfully and constitutionally be passed; but does it follow, I would respectfully inquire, because the Legislature could do this—because the Legislature, in the interest of the public and for the common good, may legally prescribe (in the lan-

guage of the Supreme Court) "a limit beyond which any charge would be unreasonable;" upon the same theory that Legislatures may by law regulate or prescribe the maximum of rates for public ferries, bridges, turnpikes, wharfingers, hackmen, draymen, and interest on money; does it follow, I say, because the Legislature may do this, and its action receive the sanction of the highest court in the land, that therefore Congress may, under the reserved power of the right to alter, amend, or repeal, in the Pacific Railroad acts, constitutionally enact a law that will compel these companies, without their consent, to surrender to the Government, out of moneys already earned by them in a proper exercise of the functions conferred by the very terms of their charter, and which have in every constitutional, legal, and moral sense become their property, not only in respect of title, but possession also, millions of dollars annually in liquidation of a debt, which, according to the decision of our highest judicial tribunal, is not due or payable for nearly a quarter of a century?

Because of the rule laid down by the Supreme Court in the Wisconsin cases does it follow by any legitimate reasoning or fair logic or correct rules of legal interpretation that the terms of this contract between the Government and these companies—a contract perfect in all its parts, and free from ambiguity in its most essential features; a contract that is an entirety; a contract which in its most important stipulations has years ago become fully executed—can, under the reserved right to alter, amend, or repeal the charter, be changed by the act of one party to the contract, without the consent of the other, so as to increase the pecuniary liability of such party, either as to the amounts of the payments to be made, or what is equivalent in point of law, by shortening the time within which they shall be made?

With the same propriety, Mr. President, might it be said that a legislative grant of public lands to homesteaders could, under a reserved power to alter, amend, or repeal, be repealed in such manner as to destroy the rights and unsettle the homes of millions, who acting upon the faith of the nation in making the grant had accepted its terms and established themselves on the public domain. Rights acquired, Mr. President, under legislative grants, as well as those acquired under a law, as Chief-Justice Marshall said in Fletcher *vs.* Peck, 6 Cranch, 103, which "is in its nature a contract" and which rights "have vested under that contract" are not held *durante bene placito* of the law-making power. Such a doctrine, as stated by Justice Story in the case of Terrett *vs.* Taylor, 9 Cranch, 50, "would be utterly inconsistent with a great and fundamental principle of republican government, the right of the citizens to the free enjoyment of their property legally acquired." The construction for which I am contending, as to the effect of the reservation of the right to alter, amend, or repeal, has been repeatedly and I think I may say almost uniformly sanctioned by the courts.

In 15 Munroe's Kentucky law and equity reports, the court said:

> A reservation by the Legislature in a charter to alter, amend, or repeal, does not imply the power to alter or change the vested rights acquired by the corporation under the charter.

Again, in the often quoted case of The Commonwealth *vs.* Essex Company, 13 Gray 253—and which case, by the way, is relied on by the friends of the Judiciary Committee bill—Chief-Justice Gray in his able opinion in discussing the power reserved in the words "the right to alter, amend, or repeal," after using this language, "it seems to us that this power must have some limit," concludes in these words:

> The rule to be extracted is this: that where under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can

take away the property or rights which have become vested under a legitimate exercise of the powers granted.

Mr. HOAR. The Senator from Oregon has attributed the language that he quotes to the wrong magistrate. That decision was long before Chief-Justice Gray's time. It was by Chief-Justice Shaw.

Mr. MITCHELL. Chief-Justice Shaw. That is correct.

Mr. TELLER. It is equally good authority.

Mr. MITCHELL. But it is equally good authority of law.

Mr. HOAR. Perhaps the Senator from Oregon will indulge me in calling his attention, as that case has been so often cited, to one fact. In that case the Legislature had in the charter of the Essex Company provided that the company should construct such a fish-way as the county commissioners of the county should decide was reasonable, and then that all persons who were affected injuriously by the fisheries above on the Merrimac River should have a right of action and should be paid damages by the company. It was after the company had complied with the decree of the county commissioners and after they had paid damages to the owners of the fisheries above that the Legislature undertook to require them, (thereby, of course, purchasing in substance of these owners the fish-rights,) to re-establish the fish-rights by opening their dams. The same chief-justice rendered a decision in a later case where the Hospital Life-Insurance Company had been granted the right to insure lives, a monopoly, on condition that they should pay one-third of the net profits to the Massachusetts General Hospital, a charitable institution. The company had accepted that charter and gone into operation under it. The court held that under the authority to alter or amend the charter the Legislature might lawfully increase the proportion of the net profits which should be paid over by the company as a condition of its doing business. That seems to be the exact case which is now before the Senate in substance.

Mr. MITCHELL. I have not examined the case referred to by the honorable Senator from Massachusetts, that is the later case to which he has attracted attention. In the case which I have quoted the learned chief-justice of the State of Massachusetts was discussing the effect of the words to alter, amend, or repeal reserved in a statute. Without going into the question as to what the particular facts of that particular case were, we have his opinion here very clearly to the effect that there is a limit to be ascribed to these words, and that it does not confer unlimited, unrestricted power on the Legislature. And so in Miller *vs.* The State, 15 Wallace, 498, the Supreme Court of the United States held that "the power to legislate upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such charter, and which by a legitimate use of the powers granted have become vested in the corporation.

I respectfully insist, then, Mr. President, that no such power is reserved to Congress by the reservation of the right to alter, amend, or repeal as used in the Pacific Railroad acts, as is contended for by the friends of the Judiciary Committee bill. And it is upon this reservation mainly the right to pass their bill is based.

It was said, however, but not argued by the honorable Senator from Illinois, [Mr. DAVIS,] that inasmuch as the constitutional prohibition against the enactment of laws impairing the obligation of contracts was only operative upon the States, and not on the Federal Government, that therefore (to use his own language) "it is not neces-

sary to rest the right to pass this bill on the reservation contained in the eighteenth section of the act of 1862." And a clause in the printed report of the Judiciary Committee, I call the attention of my friend from Ohio [Mr. THURMAN] to this printed report. I am about to advert to a clause in the printed report of the Judiciary Committee, to which I invite the special attention of the Senate; it is to the same effect.

Mr. THURMAN. What page?

Mr. MITCHELL. It is the last page; it is the winding-up when you are speaking about the power of Congress; it reads as follows:

> Being fully satisfied that Congress, under the reserved rights to alter, amend, or repeal the charter of these companies, possesses the right to pass this bill, we do not consider it necessary to say what would be the case were that reservation not in the charter. Had it been omitted, it might still be argued with much force that the power to alter, amend, or repeal legally existed. No State can make a law impairing the obligation of a contract, because that is prohibited by the Federal Constitution.

But—

And now this is what I call attention to—

But—

Says the committee—

> there is no such prohibition upon Congress.

What is the argument, Mr. President, conveyed, or sought to be conveyed, by this most remarkable portion of the report of the committee? It is this, and this alone; it cannot be anything else—that while it is true that no State can pass a law impairing the obligation of contracts, from the fact that there is a constitutional prohibition against it, that therefore Congress *has* the power to pass such a law for the reason (to use the language of the committee) "that there is no such prohibition upon Congress."

This, Mr. President, is the inevitable conclusion to which the argument of the committee leads; and after having stated the proposition, the committee, as if startled by the very enormity which its announcement must suggest to every mind, in a measure apologized for having advanced it, by the statement in the report a few lines later, as follows:

> But we do not deem it necessary to express a definite opinion upon this point. It is sufficient that in this case the power to alter, amend, or repeal, is expressly reserved.

Mr. THURMAN. Will the Senator allow me to interrupt him. If it will disturb him, I shall not say a word.

Mr. MITCHELL. It will not disturb me at all.

Mr. THURMAN. I should like to ask the Senator if he asserts that in no case Congress can impair the obligation of contracts?

Mr. MITCHELL. No, sir, I do not assert any such thing, because there is an express grant in the Constitution to Congress to enact bankrupt laws, which can impair and which do impair the obligations of contracts.

Mr. THURMAN. Is that the only case?

Mr. MITCHELL. That is one case.

Mr. THURMAN. Is there not another?

Mr. MITCHELL. I have not the time to stand here and instruct the Senator from Ohio on the Constitution of the country; life is too short for that. He asked me the question whether I contended that there was no power in Congress in any case to pass a law impairing the obligation of a contract? I said no, I did not contend any such

thing, and I pointed out an instance where Congress had the right clearly by express grant to impair the obligation of a contract under that clause in the Constitution which says that Congress may enact bankrupt laws. I do not propose to stand here and enlighten my friend all day on this question.

Mr. SARGENT. Congress has no right in morals to violate its own contract.

Mr. MITCHELL. Congress has no right in morals to violate its own contract in any respect, nor with any person. That my friend will concede.

Mr. THURMAN. If my friend will look at the decision of the Supreme Court in the Legal-Tender Cases he will find that there are half a dozen cases in which Congress can impair the obligation of a contract.

Mr. MITCHELL. There is no room for any argument on that point. I will admit that in some respects by indirection contracts may be affected by law; you cannot get up any argument with me on that point. Right here, before I leave this point, I want to ask my friend from Ohio a question if it does not disturb him, and that is, whether the Committee on the Judiciary, or the honorable Senator who drew that report, intended to have the Senate understand, by the clause in the report that there was no prohibition upon Congress to pass a law impairing the obligations of a contract, that he had reference to the specific cases in which Congress had the power under special grant to interfere with the obligation of contracts, or whether, upon the contrary, he and his committee did not mean to convey the impression to the Senate and to the country that because there was no inhibition in the Constitution against Congress passing a law impairing the obligation of a contract, that therefore in this particular case Congress might pass a law impairing the obligation of a contract?

Mr. THURMAN. If the Senator had read one or two lines lower down in the report he would have seen what we thought about that.

Mr. MITCHELL. I think I do see what you think about it and what you said about it.

Mr. THURMAN. First, we do not think there is any impairing of the obligation of the contract at all in repealing or amending the corporate franchise granted by Congress. The committee say:

> But there is no such prohibition upon Congress; and as it is a fundamental principle that one Congress cannot limit the constitutional powers of a subsequent Congress, it may be argued that no mere corporate franchise can be granted by one Congress that a subsequent Congress may not alter, amend, or repeal. This is a very different proposition from an assertion that Congress may, at its pleasure, destroy vested rights of property. It may be argued that, except by a bankrupt act, Congress cannot impair the obligation of a contract for want of a delegation of power to do so. But to impair the obligation of a contract is one thing and to alter, amend, or repeal a corporate franchise granted by Congress is another and a different thing, especially when the corporation is public or quasi-public.

I think a lawyer has no difficulty in understanding that.

Mr. MITCHELL. No, I do not think a lawyer has. I understood it before the Senator repeated it and I understand it now. I say this, that it is asserted in that report positively, for what purpose I will leave the Senate to judge, that while it is true that there is a clause in the Federal Constitution prohibiting States from passing a law impairing the obligation of a contract, there is no such provision prohibiting Congress from passing a law impairing the obligation of a contract.

Why, Mr. President, if it is true that Congress, because there is no

constitutional inhibition against it, can pass a law impairing the obligation of contracts, whence does it derive the power? I had supposed that the Government created by the people, and the embodiment of which is found in the Constitution of the United States, is one of limited and enumerated powers; that what by the express terms of the Constitution, or by necessary implication, are not delegated to the United States, nor prohibited by it, to the States, are reserved to the States respectively, or to the people; and that Congress therefore possessed no power to pass any law which is not expressly conferred, or which is not necessary to the execution of one expressly conferred. And of this doctrine I had supposed the honorable Senator from Ohio, who reported this bill, [Mr. THURMAN,] had been an able and consistent champion for the last thirty years; and therefore the suggestion he makes in his report is all the more startling, coming as it does from him.

And I submit in all confidence that there is no grant of power, either expressed or implied, within the folds of the Constitution of the United States that confers upon Congress the power to pass a law impairing the obligation of contracts, if we may except that clause alone in section 8 of article 1, which provides that "The Congress shall have power to establish uniform laws on the subject of bankruptcies throughout the United States." Under this clause Congress undoubtedly in one class of cases may so legislate as to impair vested rights; and the very fact that this express power is given in one case excludes the idea that it exists even by implication in any other. Nor can any such power be claimed for Congress under the general grant of legislative powers.

"All legislative powers," says the Constitution, "herein granted shall be vested in a Congress," &c. Not *all* legislative power, not unlimited power, not unrestricted legislative power, but all legislative powers "herein granted;" and in no place from the beginning to the end of the Constitution is there any power therein granted that would authorize Congress to pass a law impairing the obligation of a contract, except as I have stated.

Duer on constitutional jurisprudence, page 357, states the constitutional doctrine in these words:

> The power possessed by a State Legislature, to which everything not expressly reserved is granted, and the temptation to abuse that power, render express restrictions, if not absolutely necessary, at least prudent and useful; *but the National Legislature has no power to interfere with contracts except when it is expressly given to it.* * * * But Congress is expressly invested with this power in regard to bankruptcy as an enumerated and not as an implied power, *and in no other form can it impair the obligation of a contract.*

Again, in Calder *vs.* Buel, 3 Dall., 388, in speaking upon this very subject, of the power of Congress to pass a law impairing the obligation of contracts, the court said:

> They [referring to Legislatures] may command what is right and prohibit what is wrong, but they cannot change innocence into guilt or punish innocence as a crime or violate the right of an antecedent lawful private contract or the right of private property. To maintain that our Federal or State Legislature possess such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy altogether inadmissible in all free republican governments.

And yet in the face of these decisions, the Senator from Ohio, who reported the bill from the Judiciary Committee, says in his report, "no State can make a law impairing the obligation of a contract, because that is prohibited by the Federal Constitution; but" says he further, "*there is no such prohibition upon Congress;*" thereby arguing, as I have said, that because there is no such prohibition upon Con-

gress, it may pass such a law. And again, in his speech on this bill the other day, the honorable Senator in speaking upon this same point said:

> Mr. President, as I said before, I shall not now speak upon the power of Congress to pass this bill. My object has been simply in the opening of the discussion to explain the bill. I shall not speak upon the power to-day for another reason, and that is that the Senator from Illinois, [Mr. DAVIS,] who is on the Judiciary Committee, had prepared some remarks upon that subject, and I hope that he will take the floor when I conclude and give the Senate the benefit of his opinions upon the legal question. *For myself I have only to say that to me nothing in the world is clearer than that we have the right and would have it if there was no reservation in the charter of a right to alter, amend, or repeal.*

It will not do, therefore, now for the honorable Senator from Ohio or for any of the honorable Senators who gave their sanction to that report to say this bill does *not* impair the obligations of a contract, does not interfere with vested rights, and attempt by elaborate argument and fine-spun theories to justify the measure on the general doctrine of the right of the Government to exercise certain control over the management of corporations for the purpose of promoting the common good and protecting the rights of its creditors. Such arguments come with awkward grace in the face of a report which, if it means anything, asserts unqualifiedly the existence of a right upon the part of the Congress *in this case* to pass a law impairing the obligation of contracts.

But, Mr. President, if it be said, as it is said, that the Judiciary bill does not impair the obligation of a contract, that although it authorizes the Government to retain all moneys arising from Government transportation, when the contract says that the one-half only shall be retained; although it requires millions of dollars to be paid over annually by the companies to the Government out of their earnings, to be held, managed, and controlled by the Government, for the purpose of a sinking fund for the payment, not of a debt due the United States, but for the purposes of providing a fund to meet the payment first of the claims of *third parties*—creditors of the companies, whose debts are not due for over twenty years; the balance to go to the payment of the Government indebtedness when it matures; then in the light of the changes which this bill proposes to make in the terms of this contract, and in view of the law as I have stated it, I would ask the attention of the Senate to what the Supreme Court of the United States, in 4 Wallace, 552, said in speaking of what constituted an impairing of the obligation of a contract. The court says:

> The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the *extent* of the change which the law effects in it. *Any* deviation from its terms by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs it.

The Supreme Court, in the case of the Loan Association vs. Topeka, 20 Wallace, 662, in speaking of the powers of Legislatures under general and plenary grants of legislative power, says:

> There are limitations on such power, which grow out of the essential nature of all free governments, implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name.

And Chief-Justice Marshall, in the case of Fletcher *vs.* Peck, 6 Cranch, in discussing this question, uses this language:

> It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power, and if any be prescribed, where are they to be found if the property of an individual, fairly and honestly acquired, may be seized without compensation?

In speaking in this case of the Legislature of the State of Georgia, Chief-Justice Marshall said:

> To the Legislature all legislative power is granted, but the question whether the act of transferring the property of an individual to the public be in the nature of a legislative power is well worthy of serious reflection.

On no possible theory, then, Mr. President—and I would not have referred at all to this last phase of the case had it not been for the clause in the report of the committee, to which I have called attention, and the remark made by the honorable Senator from Ohio, in his speech upon this question—in my judgment, can the right of Congress to pass the bill reported by the Judiciary Committee be vindicated; neither under the power conferred by the reservation in the charter of the right to alter, amend, or repeal, nor by reason of any supposed, expressed, or implied grant of the Constitution of the United States, much less for the reasons suggested in the report of the Judiciary Committee, and in the speech of the honorable Senator from Ohio, as well as in the speech of the honorable Senator from Illinois, that there is "no such prohibition upon Congress" as rests upon the States, prohibiting them from making laws impairing the obligation of contracts.

I now attract attention to another feature of this bill which I regard as indefensible in law and opposed to reason. I refer to the attempt to define by law what the net earnings of these companies are, or rather what shall constitute net earnings in the future. My first objection is because it is a purely judicial question—one to be determined by the courts and not by Congress, by giving construction to the terms of a contract between the Government and these companies as it now exists. And I understand there are now pending in the Supreme Court of the United States two cases—those of the Sioux City Railroad Company and the Kansas Pacific Railroad Company—in which this very question arises as to what shall constitute net earnings under the Pacific Railroad acts. Shall Congress in advance of these decisions assume the *rôle* of the judiciary and attempt to give definition to these terms—a definition that may or may not accord with the judgment of the court?

Mr. CHRISTIANCY. The question is what the law now is, not the power of changing it.

Mr. MITCHELL. Yes, I will show in a moment what the Judiciary Committee thinks the law is, and what that same committee thought the law was on that same question twenty months ago; and I will show that the two opinions do not accord very well.

Mr. President, the definition of "*net earnings*" as given in the first section of the bill of the Judiciary Committee is either right or it is wrong. It is either a correct or an incorrect construction of the terms of an existing contract. If it is right, then, perhaps, in so far as this question is concerned, no rights of any one may be infringed; if it is wrong, then unquestionably the opposite result must follow. If wrong it may injuriously affect the rights of the United States or the rights of the companies. And the complete somersault made on this question by the Judiciary Committee proves one of two things, either that the committee are wrong in their definition, or else they were not right in their definition as given us in the bill reported from that same committee less than two years ago.

Mr. THURMAN. Will the Sentaor——

Mr. MITCHELL. In a moment, when I get through with this sentence. In the bill of two years ago in defining "net earnings" under these acts, that committee excluded from the gross earnings, "all

sums owing or paid by said companies as interest on any portion of their indebtedness;" while in their bill of to-day, in defining what shall be "net earnings," they deduct from the gross earnings not only the necessary expenses actually paid within the year in operating their roads and keeping them in a state of repair, as was done in the bill of two years ago, but also the sum paid by them within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over the lien of the United States.

In other words, the net earnings as defined by these two bills, each receiving the sanction of the Judiciary Committee of the Senate, and each advocated by its promoters with a zeal that as a rule speaks conviction, is for a single year about $3,305,531 less in one than in the other; being the amount of interest that the two companies pay annually on their first-mortgage bonds, and making a difference in the amounts to be paid into the sinking fund annually by these companies under the two bills of $826,382, less only the proportionate share of the 5 per cent. on the net earnings, whatever they may be, and the proportionate share of the amount earned during the year on Government transportation. Only a slight difference, Mr. President, of over $3,300,000 in the net earnings of these companies in any given year, no matter what the gross earnings may be, under the two definitions of the Judiciary Committee as to what *in law and equity* shall constitute "net earnings," and which definitions have been reported to the Senate within twenty months of each other.

Mr. THURMAN. Now, will the Senator allow me to interrupt him?

Mr. MITCHELL. In a moment. This fact proves two things——

Mr. CHRISTIANCY. In the first place it is not a fact.

Mr. MITCHELL. If it is not a fact, there is plenty of time to correct me in the next two or three weeks, although I am willing to be corrected now when I get to the end of this particular point. This fact proves two things: first, that even a committee of the great legal learning of the Judiciary Committee of the Senate, like other committees of less learning and ability, sometimes at least falls into error; because we are bound, in proper respect to that committee and its report, to assume that the first bill was an error, otherwise it would have been adhered to, and, in the second place, that, like all good committees of the Senate, its members are ready and willing to correct an error whenever convinced they have committed one.

But, however this may be, I insist that the term "net earnings" from the moment the contract between the Government and these companies dated its existence by the acceptance of the terms of the charter, by the companies, had a definite, fixed meaning in law.

Mr. THURMAN. I do not suppose the Senator from Oregon intends to do injustice to the committee.

Mr. MITCHELL. Not at all.

Mr. THURMAN. He surely has never read this report; or, if he has, he has read it in so perfunctory a manner that he does not understand it. The Judiciary Committee has never, either in the report it made nearly two years ago, or in the report that it has made now, or in the bill reported nearly two years ago, or in the bill now reported, attempted for one single moment to define what are "net earnings" under the terms of the acts of 1862 and 1864. On the contrary, they have asserted in the most express terms that their provisions as to net earnings are not a definition or an interpretation under the acts of 1862 and 1864, but are an exercise of legislative power to declare what shall be net earnings in the future. They have said so in so many words. In the last report, after stating wherein the law officer of the

Government and the companies differ as to what constitute net earnings, the committee say:

> The right to the 5 per cent. is given by the sixth section of the act of 1862, and, reading that section in connection with the eighteenth section, we are not prepared to admit the claim of the company. But whatever may be the true interpretation of these sections, we are of the opinion that, under its reserved right to alter, amend, or repeal, it is competent for Congress to define, for the future at least, what shall be deemed to be net earnings. And, in view of the rights of the first-mortgage bondholders, and as a fair adjustment of the conflicting claims of the Government and the company, we think it would be right to deduct in future not merely the operating expenses but also the interest on the first mortgage; and the amendment we report is to that effect. As to the past, we leave the question upon the law as it now stands to the decision of the Supreme Court in the case pending before it.

That this bill is more lenient to the companies than the bill reported nearly two years ago is very true, and the reasons for that I am ready to state whenever it is necessary to do so.

Mr. MITCHELL. I do not wish to misrepresent the committee, but the Judiciary Committee of the Senate cannot escape from their positions upon this question by any such arguments as are advanced now by the Senator from Ohio. There is no escape from the recorded facts of history, which are to this effect, that twenty months ago the Judiciary Committee of this body undertook to define what should constitute net earnings in the future by giving a construction to the acts of Congress under which these companies were organized, and they have done the same thing to-day. I do not care whether you call it a definition or whether you say in the language of the committee that the net earnings shall be *considered* to be so and so hereafter. The fact is all the same. The purpose of the committee and the purpose of this bill is to define by legislative enactment what shall constitute the net earnings of these companies from this time on; and their rights and the rights of the Government are to be determined according to the definition. But however this may be, I insist that the term "net earnings" from the moment the contract between the Government and these companies came into existence by the acceptance of the terms of the charter by the United States had a definite, fixed meaning in law. I call the attention of the committee to that proposition.

If such meaning was doubtful or ambiguous, what person or what power shall remove the doubt? Can either of the parties to the contract, without the consent of the other, define it, so as to bind the other? If Congress can define it, then why not the companies? There is nothing in the sovereign power of Congress that gives to it more power than a private individual, in so far as giving construction to a contract between the Government and the citizen is concerned; because, as I will show, when the Government makes a contract with its citizens it divests itself of its sovereignty in this respect and is clothed with no greater power than an individual. The truth is, neither Congress nor the companies can give a definition to this term that is binding on the other, from the simple fact that the question is one for the courts and not for Congress; it belongs to the judicial and not to the legislative department of the Government.

It has been ruled over and over again that the Government by becoming a party to a contract with its citizens, *ipso facto* divests itself of its sovereignty with respect to the terms and conditions of the contract, and stands henceforth in the same position as a private person in respect to such terms and conditions, and its construction and interpretation. In the case of The Commonwealth *vs.* Proprietors of

New Bedford Bridge Company, 2 Gray, 339, in speaking upon this very question, the court said:

The Commonwealth and the defendants are but parties to a contract. Each has equal rights and privileges under it, and neither can interpret its terms authoritatively, so as to control and bind the rights of the other. The Commonwealth has no more power or authority to construe the charter than the corporation. By becoming a party to a contract with its citizens the Government divests itself of its sovereignty in respect of the terms and conditions of the contract and its construction and interpretation, and stands in the same position as a private individual. If it were otherwise, the rights of parties contracting with the Government would be held at the caprice of the sovereign and exposed to all the risks arising from the corrupt or ill-judged use of misguided power. The interpretation and construction of contracts, when drawn in question, between the parties, belongs exclusively—

Mark the language—

to the *judicial department* of the Government. The Legislature has no more power to construe their own contracts with their citizens than those which individuals make with each other. They can do neither without exercising judicial powers, which would be contrary to the elementary principles of our Government. * * * If the Legislature have the power to decide upon the true meaning of the terms of the contract, and to determine what shall be deemed suitable in the construction of the bridge and draws, there can be no limit placed on the exercise of this power.

And now, Mr. President, in this connection I call attention to what it seems to me is a most inexcusable solecism in the bill reported by the Judiciary Committee. My friend from Michigan in discussing these measures on day before yesterday, became very sarcastic as well as facetious, over what he conceived to be the absurdities of the bill reported by the Railroad Committee. He assumed for his bill a virtue, even if it had it not, while he sought to fairly demolish the other, not by argument, but with scathing sarcasm, and blinding sallies of wit of which he is so great a master. Had the jocularity of my venerable friend been imparted in a less degree than it evidently was to the framework of the bill, to which he doubtless contributed much, it would not perhaps to-day be regarded as presenting in some of its provisions the extremely ludicrous aspect it unquestionably does. I now contrast the provisions of section 1 with those of section 5 of the bill of the Judiciary Committee. Section 1, in defining what shall constitute the "*net earnings*" of these companies, states it shall be what remains of the *gross* earnings, after deducting the necessary expenses actually paid within the year in operating the road, and keeping the line in repair; *and also* the sum paid within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over the lien of the United States. Very well, so far as this defines what shall constitute *net* earnings it is perfectly clear, and I have no criticism to offer, save and except that it is *barely* possible if not probable that the rule invoked in the definition is not correct. Now we come to section 5, which provides:

That whenever it shall be made satisfactorily to appear to the Secretary of the Treasury, by either of said companies, that 75 per cent. of its net earnings as hereinbefore defined for any current year are or were insufficient to pay the interest for such year upon the *obligations of such company, in respect of which obligations there may exist a lien paramount to that of the United States*, and that such interest has been paid out of such net earnings, said Secretary is hereby authorized, and it is made his duty, to remit for such current year so much of the 25 per cent. of net earnings required to be paid into the sinking fund as aforesaid as may have been thus applied and used in the payment of interest as aforesaid.

Now, then, can mortal man in reading this section tell from the language used what "*obligations of such company*" the committee who drafted this bill refer to? Does it or does it not refer to or include the first-mortgage bonds of the companies referred to in section 1 of the bill, and the interest on which is to be deducted from the gross earnings, before there can be under the committee's definition any net earnings whatever?

The clause in section 1 is:

*Their first mortgage bonds, whose lien has priority over the lien of the United States.*

While the language in section 5 is:

The obligations of such company, in respect of which obligations there may exist a lien paramount to that of the United States.

Does or does not, I inquire, this latter clause include within its meaning the first-mortgage bonds described in section 1? If it does—and I can see no reason, by any fair rule of legal and statutory construction, why it does not, for, in truth, there are no obligations of such companies whose lien is paramount to that of the United States, save and except the first-mortgage bonds of such companies—then the committee that reported this bill has been guilty of that which, were it not the work of such a distinguished committee, would be regarded as the flagrant absurdity of first saying that the interest on a certain class of indebtedness should be paid out of the gross earnings before there should be any *net earnings*, and then, in the next breath, of declaring that if 75 per cent. of the net earnings were not sufficient in any year to pay *this same interest*, and it should be made satisfactorily to appear to the Secretary of the Treasury that such interest has been paid out of the net earnings, that then he shall remit so much of the 25 per cent. of the net earnings to be paid into the Treasury as may have been thus applied.

Whatever may be said, Mr. President, of the legal ability manifested in drawing this bill, surely the committee have secured immortality to their fame for the ingenuity they have manifested in the presentation of a business proposition.

In this respect my honorable friend from Ohio, the venerable *daddy* of this bill, if I may so speak, as I do with all respect, and his equally venerable but more facetious co-worker, my distinguished friend from Michigan, are justly entitled to the enduring gratitude of the economist and the lasting devotion of the financial and business world.

But suppose the construction is different. Suppose the committee did not intend in the words employed in the fifth section to refer to or include the first-mortgage bonds of the company as designated in the first section, then what in the name of common reason did they refer to, as no other such obligations are in existence? And in this aspect of the case the dilemma of the committee becomes more apparent than ever, and while the logic of this bill in this respect may not be illustrated by Dogberry, it may, I apprehend, by the controversy related by Johnson in his writings as having occurred between the young rhetorician and the old sophist. A young rhetorician said to an old sophist: "Instruct me in pleading and I will pay you when I gain a cause." The master gave the instruction and sued for his pay, and the scholar attempted to elude the claim by a *dilemma*. "If I gain my cause," said he, "I shall withhold your pay, because the award of the judge will be against you. If I lose it, I may withhold it because I shall not have gained a cause." The master replied, "If you gain your cause you must pay me, because you are to pay me when you gain a cause; if you lose it you must pay me because the judge will award it."

But, then, what more could be expected, Mr. President, of that committee in the shape of either law or logic if we may believe the reported statement of its chairman in regard to the manner in which, under the peculiar state of mind of several of its members, it is compelled to transact its business. Of course I do not pretend to vouch for either the truth of the statement itself or of the matters averred

in it, but give it as I find it in the Washington correspondence of the Buffalo Commercial Advertiser. The article is headed "*Presidential Bee-Buzzing*," and reads as follows:

Senator EDMUNDS says there are so many presidential candidates on the Committee on Judiciary that business is very much behind. He says that on the day when the committee meets, CONKLING will come in first and find a slim attendance. He will sit a little while impatiently and say:

"Well, I don't suppose there will be a quorum this morning, and I have other matters to attend to. If DAVIS and THURMAN would drop their presidential aspirations and attend to committee business we could do something."

And he will go out. Then THURMAN will come in and ask:

"Where's CONKLING?"

When told that he had been in and left to look after other matters, he will say:

"Where's DAVIS?"

"DAVIS hain't come."

"Well," THURMAN will say, "CONKLING and DAVIS have got the Presidency on the brain, and of course we can't expect anything of them. Call me when you get a quorum."

And he will go out. Then DAVIS will come in and say:

"Well, CONKLING and THURMAN are absent again. Those two men are so busy working up their presidential campaigns that they neglect their Senatorial duties."

And so it goes every week, EDMUNDS says.—*Washington letter to Buffalo Commercial Advertiser.*

I now, Mr. President, desire briefly to call attention to the bill reported from the Railroad Committee. It is a bill intended not only to protect the Government in the full and final payment into its Treasury of nearly $155,000,000, but it is a bill in the interest of peace, a proposition looking to a full, final, and complete settlement of a controversy, the very existence of which, if perpetuated, will inevitably result in very great loss to the Government, if not of the entire sum I have named. It proposes, as does the bill from the Judiciary Committee, to create a sinking fund, the nest-egg or nucleus of which shall be at least $2,000,000, and as much more as the Government shall be owing these companies for Government transportation, on the 31st day of the present month; that is, the one-half of the whole amount earned by the companies for Government transportation; it may swell the amount most probably to over $3,000,000. It cannot be less than $2,000,000.

In addition to this, each of the companies shall pay into the sinking fund, which shall be controlled and managed by the Secretary of the Treasury, and upon which interest shall be credited and added semi-annually at the rate of 6 per cent., the sum of $500,000 until the year 1900. That is to say, the two companies shall pay to this fund $1,000,000 every six months or $2,000,000 annually until the year 1900—October 1, 1900—when the principal and interest of all the bonds shall have matured. Then settlement is to be made, the amount of the sinking fund at that date with its accumulations, and which will then amount to over $100,000,000 of money absolutely in the Treasury of the United States, shall be deducted from the whole amount then due from the companies to the Government, which at that time will include not only the principal of the bonds together with all interest represented by the coupons paid by the Government, but also interest on the whole amount of principal from about July, 1898, the average date of the maturity of the bonds.

The balance shall then be paid by the companies in fifty equal semi-annual installments, together with interest on the whole amount of principal remaining unpaid, payable every six months, the rate of interest to be the same that the United States shall then be paying on the greater portion of its indebtedness. These payments to be in lieu of all payments now required of the companies under existing

laws. Ample provisions are made in the bill for the protection of the interests of the Government and the enforcement of its rights in the event of a failure on the part of either or both of these companies to comply with the conditions imposed by this bill—the criticisms of my friend from Michigan to the contrary notwithstanding, and which of course were not intended to be serious, as that was simply the funny part of his speech.

Mr. CHRISTIANCY. Mr. President, I disclaim that. I was entirely in earnest when I used that illustration, because I thought the case deserved it.

Mr. MITCHELL. Of course I take it for granted, because the Senator now says he was in earnest and that he was not funny the other day, that he was in earnest, and I will say this to him simply upon that point: if that is the only criticism which can be found with the bill of the Railroad Committee, if it is a good bill, one in the interest of the Government, and the provisions in relation to the rights of the Government, conferring on the Government the power to enforce the provisions on the company, are not sufficiently strong, why, then, does not the Senator from Michigan offer any amendments that he thinks proper and right? Of course they will receive consideration, because I can assure him that for one I have no disposition to permit these companies to escape from any obligations that may be rightfully and justly imposed upon them by any weakness in the law by which they may be compelled to perform these conditions.

The present statutory lien in favor of the Government is not only preserved in all its vigor as to *existing* obligations and rights, but is, by the very *terms* of this bill, extended in its operation so as to cover in its grasp in favor of the Government all the *new* obligations imposed on the companies by this bill. The fourth section is in these words:

That the mortgage of the Government created by the fifth section of the act of July 1, 1862, amended by the act of July 2, 1864, shall not be in any way impaired or released by the operations of this act until the whole amount of the principal of said bonds, with the interest thereon paid by the United States as aforesaid, shall be fully paid; but said mortgage shall remain in full force and virtue, and, upon the failure of either of said companies to perform the obligations imposed upon them by this act, said mortgage may also be enforced against such defaulting company for any such default; the Government, however, duly crediting and allowing to the company upon said mortgage all payments which may have been made in part execution of this act, and interest thereon to be credited and added thereto semi-annually as hereinbefore provided.

And the fifth section is in these words:

That this act shall take effect upon its acceptance by said railroad companies, or if accepted by only one of said companies, then as to the company so accepting the same, which acceptance shall be filed with the Secretary of the Treasury within four months from the passage of this act, and shall show that said company or said companies have agreed to the same at a meeting of stockholders; and if said companies shall make punctual payment of the sums herein provided for, and perform all the conditions hereof, this act shall be deemed and construed to be a final settlement between the Government and the company or companies so performing the same, in reference to all matters relating to a reimbursement to the Government by said companies; but in case of failure so to do, Congress may at any time alter, amend, or repeal this act as to such company so making default.

These are, in brief, the principal features of the bill reported by the Committee on Railroads. The bill proceeds on the theory that the relations existing between these companies and the Government are those growing out of contract; that no change in that contract in any manner affecting its terms and conditions so as to impair its obligations can be made by any act of the Government to which the companies do not give their assent. It recognizes the fact that the

hands of the Government, in so far as possessing any power by its own mere act to modify the terms not merely of the franchise but of a contract made in pursuance of the charter, dictated by itself and vitalized by the solemn act of its Congress and Executive over fourteen years ago, are paralyzed by the consequences of its own act.

It recognizes, furthermore, the paramount duty of Congress to maintain the integrity of the Government, and preserve its faith with its contractors and debtors by holding inviolate the terms of all its compacts; and not to permit either the honor or the interests of a great nation to be sacrificed in an hour of feverish excitement and menacing unrest either upon the dangerous altar of modern agrarianism, or yet by making unreasonable concessions to the unjust demands of corporate power. It recognizes the fact that a prolongation of the controversy between the Government and these companies will result, in great probability, in a loss to the national Treasury of over $100,000,000, while its settlement under the provisions of this bill, by the time the debt matures, will pay into the Treasury of the United States in money on that debt over $100,000,000. While the payment of the balance then remaining due and unpaid will, with interest thereon, payable semi-annually, be abundantly secured to the Government.

As a fair business proposition for the settlement of a great controversy, a settlement fair to the companies and just to the Government, the Committee on Railroads, after weeks of careful investigation of the whole subject, submit it to the consideration of the Senate and of the country; and as chairman of that committee and in vindication of its action, I have deemed it my duty to say this much.

Mr. THURMAN. Mr. President, I do not rise to discuss these bills further now. When the proper time comes, I shall endeavor to prove to the Senate several propositions. I shall endeavor to show to the Senate that the Railroad Committee bill is a new subsidy to these two companies very nearly equal in amount to the bond subsidy originally granted. I shall endeavor to show to the Senate that it would be better for this Government to lose every dollar that it has ever loaned to the two companies than to give up, as the Railroad Committee bill does give up, the right of Congress to alter, amend, or repeal these charters. But I do not rise for the purpose of discussing that to-day. I only rise to notice two things said by the Senator from Oregon.

The Senator seems horror-stricken at a remark in the report of the Judiciary Committee that there is no prohibition in the Federal Constitution upon Congress impairing the obligation of a contract. One would think that if he felt that horror he would not have been content with the mere expression, but he would have pointed out the provision in the Federal Constitution that contains such a prohibition.

Mr. MITCHELL. I did not claim that there was any such provision in the Constitution.

Mr. THURMAN. That is just what I said. Then the Senator ought not to have expressed so much horror that the Judiciary Committee have said precisely what the Senator now says; but the Judiciary Committee have not asserted or attempted to assert as a broad proposition that Congress can impair the obligation of contracts—nothing of the kind. The Judiciary Committee have only suggested, what was no new idea at all, that where corporate franchises are granted by the legislative body and there is no prohibition in the Constitution that forbids that legislative body to alter, amend, or repeal them, it has the right inherent in it in the very nature of government to alter,

laws. Ample provisions are made in the bill for the protection of the interests of the Government and the enforcement of its rights in the event of a failure on the part of either or both of these companies to comply with the conditions imposed by this bill—the criticisms of my friend from Michigan to the contrary notwithstanding, and which of course were not intended to be serious, as that was simply the funny part of his speech.

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hands of the Government, in so far as possessing any power by its own mere act to modify the terms not merely of the franchise but of a contract made in pursuance of the charter, dictated by itself and vitalized by the solemn act of its Congress and Executive over fourteen years ago, are paralyzed by the consequences of its own act.

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Mr. MITCHELL. I did not claim that there was any such provision in the Constitution.

Mr. THURMAN. That is just what I said. Then the Senator ought not to have expressed so much horror that the Judiciary Committee have said precisely what the Senator now says; but the Judiciary Committee have not asserted or attempted to assert as a broad proposition that Congress can impair the obligation of contracts—nothing of the kind. The Judiciary Committee have only suggested, what was no new idea at all, that where corporate franchises are granted by the legislative body and there is no prohibition in the Constitution that forbids that legislative body to alter, amend, or repeal them, it has the right inherent in it in the very nature of government to alter,

to amend, or to repeal. That is it. Anybody who listened to my friend from Alabama yesterday could not have misunderstood what that argument means.

Mr. MITCHELL. Will the Senator allow me to ask him a question?

Mr. THURMAN. Certainly.

Mr. MITCHELL. Does he pretend to maintain here that Congress can do everything it is not prohibited from doing by the Constitution?

Mr. THURMAN. I do not pretend any such thing. I have been a strict constructionist all my life.

Mr. MITCHELL. So I supposed, and therefore I have been the more astonished.

Mr. THURMAN. But I do say that no one Congress can grant away the powers of Congress so as to tie up a subsequent Congress and deprive it of its legitimate constitutional power. I say that an act of Congress granting a franchise is, like any other act of Congress, subject to alteration, or amendment, or repeal by Congress, except where there may be a provision in the Constitution of the United States that to some extent may prohibit it. That is one question; but a question of divesting rights is another question; a question of impairing the obligation of contracts is a wholly different question.

But what I want to call the attention of the Senate to is that the Committee on the Judiciary did not pretend to decide the question; they only suggested it for the consideration of the Senate, themselves relying on the reserved power to alter, amend, or repeal, contained in the charter.

Mr. MITCHELL. May I inquire of the Senator what it has to do with this case, what it was brought in here for, unless some claim was made based upon it?

Mr. THURMAN. I will tell the Senator what it was brought in here for. If he had listened to the speech made yesterday he would have found out what it was brought in here for.

Mr. MITCHELL. I did listen.

Mr. THURMAN. I for one say if the reserved power was stricken out of this charter our power would be just as ample as it is now.

Mr. MITCHELL. Then where does Congress get it? Does it get it from an express grant of power or from its inherent sovereignty?

Mr. THURMAN. Where does it get it? If my friend is not sufficiently grounded in the fundamental principles of constitutional law to know that the granting of corporate franchises by an act of legislation cannot bind another Congress to let them stand forever, then I despair of ever putting an idea into his head.

Mr. MITCHELL. Very well.

Mr. THURMAN. The corporate franchises, the whole of them, we may repeal. Let me put the question at once——

Mr. MITCHELL. Allow me to put a question to the Senator right here. Take the case of a legislative grant of land; does the Senator hold that it may be repealed so as to destroy the rights vested under that grant?

Mr. THURMAN. No.

Mr. MITCHELL. Why?

Mr. THURMAN. Because there is an express provision of the Constitution that prevents that. When Congress has made a legislative grant of land, the title is vested in the grantee; it becomes his property; and then comes in the provision of the Constitution that private

property shall not be taken for public use except upon just compensation. I say the title would be just as good without that, because no power is delegated to Congress to take away from me my farm or my house. There is not one lawyer who argued the Dartmouth College case who pretended for one single moment that if it were not for the provision in the Federal Constitution that no State should make any law impairing the obligation of a contract, the act of the New Hampshire Legislature would not have been perfectly valid. I do not see fit to go into that. I do not want to do so. I only want to show my friend from Oregon that if he wishes to express horror at the ideas that are contained in this report he had better go further, and go for the Supreme Court of the United States, who have gone a long way beyond anything that is contained in the report of the Committee on the Judiciary. Let us see what Judge Strong, delivering the opinion of the majority of the Supreme Court, said in The Legal-Tender Cases, 12 Wallace, 549, 550:

> Nor can it be truly asserted that Congress may not, by its action, indirectly impair the obligation of contracts, if by the expression be meant rendering contracts fruitless or partially fruitless.

Mr. MITCHELL. I inquire of the Senator from Ohio if he concurs in that opinion.

Mr. THURMAN. I am not speaking of my concurrence, I am showing you that the Supreme Court of the United States have gone a great deal further than the Judiciary Committee have gone. I do not know that I am here to express any opinion about that. They have rendered a great many decisions that, in my judgment, were wrong, and it is possible that they were right.

Mr. EATON. They were wrong in that one.

Mr. THURMAN. They have rendered a great many decisions that my friend from Connecticut would not have delivered, and yet they may have been right and he may be wrong. At all events, their decisions are the law until they are repealed or reversed, and that is sufficient for me.

> Nor can it be truly asserted—

Says the court—

> that Congress may not, by its action, indirectly impair the obligation of contracts, if by the expression be meant rendering contracts fruitless or partially fruitless. Directly it may be, confessedly, by passing a bankrupt act, embracing past as well as future transactions. This is obliterating contracts entirely. So it may relieve parties from their apparent obligations indirectly in a multitude of ways. It may declare war, or, even in peace, pass non-intercourse acts, or direct an embargo. All such measures may and must operate seriously upon existing contracts, and may not merely hinder but relieve the parties to such contracts entirely from performance. It is, then, clear that the powers of Congress may be exerted, though the effect of such exertion may be in one case to annul and in other cases to impair the obligation of contracts. And it is no sufficient answer to this to say it is true only when the powers exerted were expressly granted. There is no ground for any such distinction. It has no warrant in the Constitution or in any of the decisions of this court. We are accustomed to speak for mere convenience of the express and implied powers conferred upon Congress. But in fact the auxiliary powers, those necessary and appropriate to the execution of other powers singly described, are as expressly given as is the power to declare war or to establish uniform laws on the subject of bankruptcy. They are not catalogued, no list of them is made, but they are grouped in the last clause of section 8 of the first article, and granted in the same words in which all other powers are granted to Congress. And this court has recognized no such distinction as is now attempted. An embargo suspends many contracts and renders performance of others impossible, yet the power to enforce it has been declared constitutional. The power to enact a law directing an embargo is one of the auxiliary powers, existing only because appropriate in time of peace to regulate commerce or appropriate to carrying on war. Though not conferred as a substantive power, it has not been thought to be in conflict with the

Constitution, because it impairs indirectly the obligation of contracts. That discovery calls for a new reading of the Constitution.

If, then, the legal-tender acts were justly chargeable with impairing contract obligations, they would not, for that reason, be forbidden.

Now, my friend must quarrel with the Supreme Court of the United States, and settle the question with them before he undertakes to rebuke the Committee on the Judiciary for merely suggesting the question, and much more when the Judiciary Committee have explained that the power to alter, amend, or repeal a charter is a wholly different question from the power, where there is no constitutional provision, to impair a contract between A B and C D.

One word more. The Senator from Oregon undertook to be facetious over that provision in the Judiciary Committee bill that relates to the 75 per cent., and thought that the committee had fallen into a very singular error in that—the error, as I understood him, of apparently deducting twice the interest on the first-mortgage bond of the companies. There is nothing at all in that. It is simply because the Senator does not understand the bill. The first section of the bill does authorize the deduction of the interest on the first-mortgage bonds before the computation of the 5 per cent. begins. That is for the reason stated in the report—a reasonable adjustment of the difference between the Government and the companies. Then comes the fifth section, which is that if 75 per cent. of the net earnings of the companies shall not be sufficient to pay the interest on the first-mortgage bonds—for they are also referred to in that fifth section; they are all, as the Senator himself truly stated, obligations whose lien is prior to that of the Government—if 75 per cent. of the net earnings is not sufficient to pay the interest on the debt, then the Secretary of the Treasury, upon being satisfied of that fact, may make an abatement of the amount which the companies are required by this bill to pay into the sinking fund.

Mr. MITCHELL. Just there——

Mr. THURMAN. Do not stop me till I explain.

Mr. MITCHELL. You stopped me a great many times.

Mr. THURMAN. Let us see if that was not a necessary provision. Suppose that in any given year there should be no net earnings at all, there would then be no computation of 5 per cent., and it might be that there would not be a sufficient amount of earnings to pay the interest on the first-mortgage bonds; it might be that after deducting the operating expenses the residue would not be sufficient to pay the interest on the first-mortgage bonds. Such a thing as that might well be in some given year. It is the case now with a large majority of the railroad companies in the United States, and it might be with one of these companies. If this fifth section were not in the bill in that very case the Union Pacific would be required to pay still in that very year $850,000 into the sinking fund, and the Central Pacific $1,200,000; and if they did not do it their charters would be forfeited. Was it not then a necessary provision? Was it not a wise provision? It was a wise provision to put in there for their safety in case sudden calamity should befall them, so that 75 per cent. of their net earnings in any year would not suffice to pay the interest on the first-mortgage bonds.

Mr. MITCHELL. Will the Senator allow me now a moment?

Mr. THURMAN. Certainly.

Mr. MITCHELL. I confess I am more surprised than ever, now that the Senator from Ohio has admitted that the construction to be placed on the fifth section is just what I contended was the legiti-

mate construction; namely, that the obligations referred to in that section, and designated as obligations whose lien is paramount to that of the United States, are the same obligations referred to in the first section, namely, the first-mortgage bonds of the companies. Now, Mr. President, see the absurdity of the provisions of the fifth section. The Judiciary Committee provide that there shall be no net earnings whatever until the interest on the first-mortgage bonds is paid. That is provided in the first section; and then in the fifth section they say that if 75 per cent. of the net earnings is not sufficient to pay the interest on these very same obligations then there shall be a deduction made by the Secretary of the Treasury from the 25 per cent. net earnings which the companies, under the Judiciary Committee bill, are to pay into the Treasury of the United States. Mr. President, the provisions of this bill are a monstrosity. There is neither law nor logic upon which they can find a resting-place, and I have nothing to take back but much to add, had I the time, to my criticisms upon those provisions.

Mr. TELLER. Mr. President——

Mr. HOAR. I desired before the Senator from Oregon left the floor to put a question to him in regard to his view upon this matter, and I hope the Senator from Colorado will permit me to do it now.

Mr. TELLER. I yield for that purpose.

Mr. HOAR. I desire to inquire of the Senator from Oregon, as I did of the Senator from Ohio [Mr. MATTHEWS] the other day, whether he means seriously to deny as a power of Government, without any regard to the question of impairing or affecting contracts, to Congress the right to enact that the public corporations which it has itself created for public purposes shall protect themselves from insolvency by setting apart a portion of their earnings in a sinking fund to secure their creditors instead of dividing them in dividends among the stockholders? In other words, without any regard to any reservation in the charter, cannot the Congress of the United States constitutionally require that the national banks should devote a certain portion of their profits as a reserve, or keep on hand a certain quantity of specie, or should establish a sinking fund of a certain character for the purpose of security to their bill-holders?

Now, as I understand it, the proposition of the Judiciary Committee is nothing more nor less than that. It does not devote this sinking fund to the payment of the Government loan; it does not pay a dollar of the Government indebtedness before it is due, taking the claim of the railroad companies as to the time when that indebtedness falls due to be sound and correct; but it simply enacts that a company created for this great public purpose, to wit, the maintenance of the railroad connection between the two seas, (a purpose which must fail when the solvency of these companies ceases,) shall be required to keep up its solvency in the future. Has not Congress power to do that by enacting that instead of dividing all their earnings they shall set apart a portion of them as a sinking fund to meet this vast future obligation?

Mr. MITCHELL. I do not know that the Senator from Massachusetts had any special right to ask me a question after I had finished my speech and sat down. At the same time I waive that and will answer in a word. The Senator asks me whether I deny the power on the part of Congress to provide for a sinking fund to meet this indebtedness when it is due; or rather he puts an abstract case. I do not deny that in the case of a corporation chartered by authority of the General Government, where there are no restrictions in the

charter itself or in the terms of the contract that has been made in pursuance of the terms of the charter, Congress would have abundant and ample power to provide for a sinking fund and to exercise control over the earnings of the company so as to preserve the rights of the Government and protect its claims as against the company; but the difficulty is that in my judgment that is not this case. That is where the difficulty comes in. My understanding of this case is that a contract has been entered into by virtue of the provisions of this charter, that the terms of that contract are specific, and that those very terms exclude the idea of any reserved power in Congress to do anything different.

Mr. HOAR. Where is there any contract on that subject? That is what I have sought; and I listened to the Senator's speech in vain to find. Congress undoubtedly contracted at what time and on what terms the Government debt shall be paid; that it may be conceded Congress ought not to attempt to alter; but my question is where is there any contract that this corporation shall not prepare itself in a particular mode to be able to pay the debt which is to fall due in 1900, or about that time.

Mr. WINDOM. I rise to a point of order. Has not the Senator from Oregon concluded the speech which he commenced at one o'clock?

The VICE-PRESIDENT. The Chair supposed he had.

Mr. WINDOM. Then is not the appropriation bill before the Senate by agreement?

The VICE-PRESIDENT. The Chair has recognized the Senator from Colorado.

Mr. TELLER. I took the floor to speak on the railroad bill. I do not desire to speak upon it to-night if it is understood that I have the floor for to-morrow.

The VICE-PRESIDENT. Then, by the order of the Senate, House bill No. 3102 is before the Senate.

Mr. THURMAN. It is understood the railroad bill is laid aside only informally.

The VICE-PRESIDENT. That is the understanding.

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MARCH 21, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

The VICE-PRESIDENT. Upon this bill the Senator from Colorado [Mr. TELLER] is entitled to the floor.

Mr. WINDOM. I ask that immediately after the conclusion of the remarks of the Senator from Colorado the Senate proceed to consider the appropriation bill which was under consideration yesterday.

The VICE-PRESIDENT. To this the Chair hears no objection.

Mr. TELLER. Mr. President, it seems to me that the matter sub-

mitted to the Senate by the respective bills of the Judiciary Committee and the Railroad Committee presents two important propositions. One may be considered a legal proposition and the other a business proposition. I propose this morning, in the brief time that I shall detain the Senate, to speak upon the legal proposition only.

Senate bill No. 15 was reported by the Judiciary Committee not as an original bill, but as an amendment to the act of 1862 and the act of 1864, and is entitled "An act to alter and amend," &c.

With the bill the committee submit a report, apparently with a twofold object.

First. To show that the railroad companies mentioned in the bill are able to comply with the conditions sought to be enforced.

Secondly. To prove the power of Congress to pass the bill.

With the question of the ability of the companies to comply with the demands in the bill I shall have nothing to say, as I am not sufficiently advised to express an opinion on that subject. The Supreme Court of the United States, as well as the various State courts, have so frequently declared that an act creating a corporation was a contract between the State and the corporation, that it is not necessary to cite authorities on that point.

To determine, then, what the contract is between the Government and the railroad corporations, we must examine the act of 1862 and the act of 1864. These two acts having the same object must be considered together as one act in determining what the terms and conditions of the contract are, and what obligation the Government is under to respect the contract it has made.

(Presscott vs. Railroad Company, 16 Wall., 603.)

It is conceded by the friends of this bill that the acts of 1862 and 1864 create a contract; but it is said that Congress may now change that contract without the consent of the corporation: first, because the General Government may impair the obligation by virtue of its sovereignty or repeal any act of a former Congress and, secondly, because the power to alter, amend, and repeal the statute creating the corporation was reserved to Congress.

It is said that the constitutional prohibition touching the obligations of contracts is not binding on Congress, because it was expressly confined to the States.

This is true if the right to impair the obligation of a contract is an attribute of sovereignty, requisite and essential to the exercise of sovereign power on the part of the General Government. But if it is not essential to the exercise of sovereign power, it may be well doubted whether the General Government possesses such power.

If the power resided in the State, and the State surrendered it to the General Government, its exercise cannot be questioned. But was it surrendered to the General Government? Was the prohibition anything more than an agreement on the part of the States to forbear to exercise this power? Where does the General Government derive its power to impair the obligation of a contract? Not by grant from the States; not by necessary implication, on account of the refusal of the States to exercise it; not because it is necessary to the exercise of any of the powers conferred on the General Government, directly or by implication. All the things prohibited to the States are allowed to Congress if the things prohibited come within the purview of the express or implied powers granted. (Metropolitan Bank *vs.* Van Dyke, 27 N. Y. R., 418.)

This power to impair the obligation of a contract is not among the enumerated powers.

In the same section in which the States are prohibited from impairing the obligations of a contract, they are also prohibited from making treaties, coining money, emitting bills of credit, or granting letters of marque and reprisal. All of these are among the enumerated powers of Congress, and all of these are necessary to the existence of sovereign power.

If the prohibition to the States of itself alone implies that power, it were useless to enumerate powers so necessary to the existence of a nation.

I will admit that the prohibition to the States to exercise any powers that may be necessary and essential to the maintenance of the Government and to the carrying out of the great purpose of its creation must be held to confer that power on the General Government, as such power must reside somewhere.

The right to impair the obligation of a contract means, when put in the language of a layman, the right to take the property of the individual and appropriate it by the State. It is the taking of property without compensation; and although it may be taken with the declaration that it is taken for the good of the many, yet it is not less objectionable to the owner on that account. The exercise of the power to impair the obligation of a contract is not less repugnant to our ideas of justice when exercised by the General Government than when exercised by a State.

The Constitution declares in express terms that private property cannot be taken for public use, without just compensation. The taking of private property for public use is an exercise of power common to all nations. The States were not willing to allow the exercise of this power, so essential to the carrying on of a Government, unless it was with the express stipulation that just compensation should be so made. The Supreme Court of the United States has declared that this referred to the right of eminent domain only. The right of eminent domain was not surrendered by the States and it still resides in the States. (Barron *vs.* Mayor of Baltimore, 7 Peters, 243–7.)

Again, it is declared in the Constitution that no person shall be deprived of his property "without due process of law." This provision of the Constitution has been so often commented on by the courts that its meaning is not in doubt.

I do not contend that either of these prohibitions last referred to in terms denies to the General Government the right to impair the obligations of contracts, but I deny that such power was ever conferred on the General Government, and the exercise of that power is inconsistent with the rules of natural justice recognized in these constitutional restrictions; and it is not possible to suppose that it was intended to concede to the General Government power in all respects as repugnant to natural justice as those prohibited and which could not be necessary to exercise to discharge any functions of government.

Not an acre of land belonging to these companies can be taken for public use without just compensation; yet it is said we may arbitrarily change the contract between them and the Government and destroy more property than the value of all the lands these companies own, and the power to do such gross injustice is one derived by implication only.

That there are property rights in this contract between the Government and these corporations will not be denied. If we change the contract so as to reduce the value of such property rights, we have, within the very letter of the law, impaired the obligation of the con-

tract and have deprived these companies of their property without due process of law.

It is a power not safe to intrust to any body of men. A government that claims the right to take the citizens' property under a plea of public good, without just compensation, will not be wanting in excuse for such proceedings; and in the language of Madison,

It will be seen, too, that one legislative interference is but the first link in a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding.—*Federalist*, No. 44.

Can it then be said that the refusal of the State to exercise that power conferred it on Congress?

It was not understood at the time of the proposing of this amendment against impairing the obligation of contracts (1789) that the power denied to the States would be claimed by Congress, and James Madison, in the Federalist, speaking of the prohibition used the following language:

Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts are contrary to the first principles of the social compact and to every principle of sound legislation.

The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the spirit and scope of their fundamental character.

Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences in cases affecting personal rights became jobs in the hands of enterprising and influential speculators and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the first link in a long chain of repetitions, every subsequent interference being naturally provoked by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society.—*Federalist*, No. 44.

It is true Madison was here speaking of limitation on the States, but the objections urged against the exercise of that power by States applies equally against its exercise by the General Government.

It was contended, in a case that came before the Supreme Court of the United States in 1810, that the provision touching the impairing of the obligation of a contract did not apply to the action of a State in impairing its own contract; that it only prohibited the State from passing laws to impair contracts between individuals. The court, by Chief-Justice Marshall, said:

What motive then for implying, in words which import a general prohibition to impair the obligation of contracts, an exception in favor of the right to impair the obligation of those contracts into which the State may enter.—*Fletcher vs. Peck*, 6 *Cranch*, 138.

Applying that reasoning to this case, why now insist the States shall not authorize the impairing of the obligation of contracts, and shall not do it when it is a party to the contract, (because such impairing of the obligation of contracts is contrary to natural justice,) yet implying an authority on the part of the General Government to do this same thing? Is it less objectionable when exercised by the General Government than when exercised by the States?

The Supreme Court of the United States (1815) declared that the exercise of such power by a legislative body was contrary to the principles of natural justice.

In the case of Tenett *et. al. vs.* Taylor *et. al.*, 9 Cranch, pages 50 and 51, the court lays down the rule that should govern a legislative body with reference to legislative contracts.

The act in question was passed before the adoption of the constitutional prohibition against the impairing of contracts. The act, having passed before the adoption of the Constitution, could not be held void under it if it was legal at the time of its adoption. The reasoning of the court in that case will apply to this. The court says:

If the Legislature possessed the authority to make such a grant and confirmation, it is very clear to our minds that it vested an indefeasible and irrevocable title. We have no knowledge of any authority or principle which could support the doctrine that a legislative grant is revocable in its own nature and held only *durante bene placito*. Such a doctrine would uproot the very foundations of almost all the land titles in Virginia, and is utterly inconsistent with a great and fundamental principle of a republican government, the right of the citizens to the free enjoyment of their property legally acquired.

A private corporation created by the Legislature may lose its franchises by a misuser or a non-user of them; and they may be resumed by the Government under a judicial judgment upon a *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land and is a tacit condition annexed to the creation of every such corporation.

Upon a change of government, too, it may be admitted that such exclusive privileges attached to a private corporation as are inconsistent with the new government may be abolished. In respect also to public corporations which exist only for public purposes, such as counties, towns, cities, &c., the Legislature may, under proper limitations, have a right to change, modify, enlarge, or restrain them, securing, however, the property for the uses of those for whom and at whose expense it was originally purchased. But that the Legislature can repeal statutes creating private corporations or confirming to them property already acquired under the faith of previous laws, and by such repeal can vest the property of such corporations exclusively in the State or dispose of the same to such purposes as they may please, without the consent or default of the corporators, we are not prepared to admit; and we think ourselves standing upon the principles of natural justice, upon the fundamental laws of every free government, upon the spirit and letter of the Constitution of the United States, and upon the decisions of most respectable judicial tribunals in resisting such a doctrine.

The Supreme Court of the United States said nearly fifty years ago—

That a government can scarcely be deemed free where the rights of private property are left solely dependent upon the will of a legislative body without any restraint. The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred.

Again the court says:

The people ought not to be presumed to part with rights so vital to their security and well-being without very strong and direct expressions of such an intention.—*Wilkinson vs. Leland et al*, 2 *Peters*, 657.

And the court further declared that the power now contended resides in Congress to be repugnant to the common principles of justice and civil liberty. (Wilkinson vs. Leland, 2 Peters, 657.)

The Supreme Court in a recent case, speaking of the limitation on Legislatures with reference to the rights of property, used the following language:

It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many—of the majority, if you choose to call it so—but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

The theory of our Government, State and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments, implied reservations of individual rights without which the social compact could not exist and which are respected by all governments entitled to the name.—*Loan Association vs. Topeka*, 20 *Wall.*, 655.

The claim now made that Congress may impair the obligation of contracts because there is no prohibition in the Constitution was, I believe, first made in this body in connection with these corporations. I do not remember to have heard of such a claim here until since the railroad legislation has been before Congress. It is sought to justify it on the grounds of the vast amount of money that will be due the Government when the second mortgage now held by the Government on the road shall mature.

In determining the power of the Government to pursue a certain course, it is immaterial what the amount involved may be, and the exercise by Congress of a power clearly not given it by the Constitution, so utterly repugnant to the American ideas of a government of law, cannot be justified on the ground that the Government may be the loser in dollars and cents if this doubtful and dangerous power is not exercised.

Such claims of unlimited power of such a character on the part of Congress ought not to be heard in the Senate of the United States without calling out a vigorous protest against it, and it ought not to be less vigorous because the exercise of such power is proposed against the rights of two companies against which great prejudice exists.

An illegal attack on the least reputable citizen is not less culpable than it would be if made on the best, and if such an attack is made on the rights of those who are laboring under prejudices and in disrepute among the people, it is more likely to succeed than if made against the rights of those who are enjoying popular favor; but the wrong perpetrated is alike in its consequences in either case. Neither should the cry of public good to be accomplished or of public rights to be secured be an inducement to Congress to exercise power of a doubtful character except in cases of national peril.

There never was a violation of constitutional law or individual rights by legislative action that did not find its excuse in the cry that the public good demanded it. This has been the plea of despots and the excuse of tyrants for the exercise of despotic and tyrannical power, and it is as dangerous when heard in the Halls of the Congress of the United States as when uttered by a kingly despot.

Public and private rights will be safe only when executive, legislative, and judicial conduct shall be governed by the strict rules of law.

The impairing of contracts is not the exercise of sovereign power; is not necessary either to the securing of wealth to the nation or happiness to the people, and is allowed by no code of morals. The exercise of this power by a Government in its dealings with its own people or with other nations would render its name a by-word and reproach among the nations of the earth; it would deserve and receive the execration of all peoples governed by the principle of natural justice.

While the committee that reported this bill contended for an unlimited power on the part of the General Government over corporations of its creation and corporations to which it has given its aid, yet it is said that it is not necessary to the power of Congress over this subject that such should be the law, as the committee finds in section 18 of the act of 1862 and section 22 of the act of 1864 ample power to alter, amend, or repeal these acts. It is said by the committee in the report submitted with the bill—

> That the provision of the two acts are so inseparably interwoven that they should be considered as *in pari materia*—constituting, for the purpose of interpretation, one act.

This I believe, as before stated, is correct, and I so understand the Supreme Court of the United States to hold in Prescott *vs.* The Kansas Pacific Railway Company, 16 Wallace, page 603.

If this is so, then section 18 of the act of 1862 and section 22 of the act of 1864 must be considered together. Section 18 of the act of 1862 is as follows:

That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs and the furnishing, running, and managing of said road, shall exceed 10 per cent. upon its cost, exclusive of the 5 per cent. to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

The twenty-second section of the act of 1864 is as follows:

That Congress may at any time alter, amend, or repeal this act.

If the two acts are to be taken together for purpose of interpretation, there is no difference between section 18 and section 22, and the power to alter, amend, or repeal reserved in section 22 must be considered with the same restriction put on the power in section 18. If this is the last expression of the legislative will, the legislative will must be determined as well by the act of 1862 as the act of 1864. Section 18 is not repealed either in words or by implication. Some portions of the act of 1862 are expressly repealed, as a portion of section 17 and other parts are amended, by striking out; others by striking out and inserting. If section 22 in the act of 1864 had not been inserted, the power of Congress would be the same that it now is, on the subject, derived from section 18 of the act of 1862 and controlled by the condition therein imposed, on which Congress might alter, amend, or repeal this act. That is, the better to accomplish the object of this act, namely, to promote the public interest by construction of the road, &c., Congress declared under what circumstances it would interfere and gave an assurance that, if it was compelled to interfere on account of default of the companies and the failure to secure through these companies the object of the act, it would so interfere having due regard for the right of said companies. I do not think the words "having due regard to the rights of said companies" in any wise change the legal effect of the provision. Congress could not alter, amend, or repeal the acts without having due regard for the rights of the companies, unless, as it is now claimed, Congress is not controlled by want of power or restricted by principles of natural justice from impairing the obligations of contracts when the majority may, under excitement, prejudice, or a mistaken idea of duty, see fit so to do.

These companies have built their railroads as required in this act, have furnished the Government all the benefits it was to receive, and not being in default, it is now proposed to materially change the contract and compel these companies to assume burdens that were not contemplated at the time of the passage of the acts of 1862 and 1864. And if these companies shall believe that the Congress of the United States lacks the power to make a change in these contracts under which they built these railroads and shall resist such attempt and shall persist in it for six months, they shall forfeit all rights, privileges, grants, and franchises derived or obtained from the United States, and such forfeiture shall be judicially enforced.

The bill is harsh in its character, and does not proceed on the principle expressed in section 18, of having due regard for the interest of the companies. It is said that the companies are now able to pay the

interest on the debt, that is a paramount lien to that of the United States, and pay interest on its income bonds, land-grant bonds, sinking-fund bonds, as well as provide the amount proposed to be set apart as a sinking fund. And it is provided in this bill that if by reason of the falling off of the business it shall be found that the 75 per cent. of the net earnings, as in the bill defined, shall not be sufficient to pay the interest on the paramount lien, the Secretary of the Treasury may remit so much of the 25 per cent. as is necessary to pay interest on the paramount lien, which on the part of the Union Pacific Railroad Company amounts to $27,237,000; all other indebtedness of this company is reported by the Judiciary Committee to be, exclusive of the Government debt, $24,053,000, which is bearing interest, and the most of it at 8 per cent. The committee say we may lay out of view the land-grant bonds, amounting to about $7,500 000, because the land granted to the companies will pay that debt. This will still leave about $16,500,000 of interest-bearing debts to be paid.

No provision is made in the bill in case the receipts of the companies should so decrease that the interest on these debts cannot be paid.

It is then the *avowed* object of this bill, if it is necessary so to do to secure the amount provided for in this bill as a sinking fund, to take every dollar of net earnings, (as such earnings are defined in the bill,) except so much as may be necessary to pay interest on the first-mortgage bonds. These great companies must be managed, their business carried on, their debts paid; yet under certain contingencies the Government might absorb all the net earnings except what is necessary to pay the interest on the first-mortgage bonds, and the stockholders for their care and attention receiving nothing at all. Who believes, with this interpretation of the law, the roads would ever have been built? It is said there is no danger that the companies cannot pay all their interest and reduce their debt. This may be the case now, but when the Northern Pacific, Texas Pacific, and Canadian Railroads shall have stretched their lines to the Pacific Ocean, does any one suppose the present condition of these companies is any guidance of what their condition will then be? Have these companies made default in their contracts in any particular? Why then adopt a policy toward them that may and in all probability will at no distant day greatly embarrass them in their management and care of their property?

The inconsistency of the provisions of the fifth section, when considered in connection with the first section, has been fully exposed by the honorable Senator from Oregon. But the purpose and object of this bill is shown by the provision in section 5, that is, that all of the earnings of the companies not required to pay interest on its first-mortgage bonds and operating expenses shall be taken by the Government. Section 5 is meaningless in this bill except as it shows the intent of the advocates of the bill on this point.

But the inconsistency of section 5 with the provisions of section 1 is not greater than the inconsistency of the advocates of the bill that Congress has the power to change the contract, that the contract ought to be changed, yet that the bill does not change it. It is claimed a new rule is made for determining what the 5 per cent. due the Government is under the original act, but that that does not change the old rule. It is also said by more than one advocate of the bill, as I understand, that the proposed legislation does not make a debt due in twenty years and upward due now. It only makes the companies hoard its earnings in the power of the Government, to

hold the earnings of the companies until the Government debt is due, and that it is no payment until the maturity of the debt.

The subtlety of that reasoning is too great for the average mind. I confess that I am unable to see the legal difference in the proposition than it would be if the Government demanded the present worth of its debt, computing its interest of 5 per cent. What would we say to a law that authorized the holders of a note due in ten years to demand of the maker the deposit with him of a sufficient sum of money to pay the debt at the maturity of the note? The principle is not different, whether he demand it all at once or year by year.

Disguise it as we may, the attempt is made to make the companies pay in part a debt that is not due, to change a debt due at the end of thirty years into one payment in half-yearly installments. Can that be done and not destroy vested rights of the companies? And does the claim of the Government to do this find support in any principle declared in any of the cases cited by the advocates of this bill, not even excepting the legal-tender cases? I think not.

It is not a modification of charter rights, within any rule laid down by the Supreme Court; it is a simple attempt to change a contract made at the time of the granting the corporate power to one company, but entirely distinct from the corporate franchises or powers, and in the case of the other companies a contract made with a corporation not the creation of Congress at all.

As to the Central Pacific, then, it is a plain case of a change of contract, in no wise connected either in its character or by the terms of its creation with the charter of the company.

It is admitted by a distinguished Senator who has spoken on this subject that the companies have furnished all the facilities to the Government for transportation, &c., that they agreed to; but he says, "unless there is some provision for the payment of the debt due the Government, the Government will be in danger of losing an essential benefit contemplated by the act." If by this it is meant that the Government might lose its debt, the proposition may be correct, but if it is meant, as I suppose it is by what follows, the use of the road to the Government might be lost to the Government, I do not see the force of the statement. In connection with this he says:

> When the bonds mature the companies would, to say the least, be in danger of insolvency, and the future use of their respective roads for Government purposes put in jeopardy.

How would the insolvency of the companies put the use of the roads by the Government in jeopardy? If the road is sold on the first-mortgage bonds, income bonds, or any other debt, it is sold subject to the rights of the Government; no purchaser can take it stripped of that burden. Its franchise cannot be surrendered or extinguished, except with the Government consent.

That it is to be used for the benefit of the Government in transportation of mails and troops, is so firmly interwoven into the web and woof of the charters, that the right to so use it can be taken away only by Government consent. Its term of existence continues with that of the Government. The Government may by its insolvency lose its debt, and nothing more can be lost. This claim that the benefits of the act will be lost to the Government if the debt is, then, is not well founded in law and fact. Is it not the excuse set up to satisfy the legislative conscience for such an unusual exercise of power? The committee say if there was doubt about the power of Congress when the former report was made, it has been entirely removed by the subsequent decision of the Supreme Court of the United States, and

cite a number of cases in 4 Otto. The first case cited is the case of Munn *vs.* Ill. That case only determines that when private property is devoted to public use it is subject to public regulations. (See Munn *vs.* Ill., page 138.)

It follows the rule laid down by Lord Hale, that when private property is affected with public interest, it ceases so far as that interest is concerned to be private property, and becomes liable to be regulated with reference to that public use to which the owner has dedicated it. The rule is not new nor strange in the English courts.

In the case of Chicago, Burlington and Quincey Railroad Company *vs.* Iowa, referred to by the committee, the court decided the case on the same principle as Munn *vs.* Ill. In the case of Peik *vs.* Chicago, &c., Railway Company, the court says:

> When property has been clothed with a public interest, the Legislature may fix the limits to that which shall in law be reasonable for its use.—4 *Otto*, 178.

The other cases cited by the committee in its report were decided on the same ground. And if the attempt was now made in the bill reported by the Judiciary Committee to regulate the rates of freight or passenger fares, or any other thing that was directly connected with its use by the public as a railroad, then the authorities cited would bear on the subject; but nothing of that kind is attempted in the bill. It is simply an attempt to collect a debt, and it may be said it is a new way to collect not an old debt, but a debt not yet due.

A consideration of the cases cited from 4 Otto will convince any one who will examine them with care that no principle is there established that can be invoked in aid of this bill. On the contrary, the care taken by the court to expressly state the ground on which these statutes, all in character alike, were sustained make these cases authority against the exercise of the power in the way now proposed.

In the case of Munn *vs.* Ill., page 126, the court says:

> When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has created.
>
> He may withdraw his grant by discontinuing its use, but so long as he maintains the use, he must submit to that control.
>
> This may apply to the use of the railroad and its appurtenances, but how can it be said to apply to a debt not yet due and now proposed to be legislated to be due?

The case of Chicago, &c., Railway Company *vs.* Iowa was decided, as declared by the court, on the principle laid down in the case of Munn *vs.* Illinois; yet in the course of reasoning the court says, on page 162:

> It was within the power of the company to call on the Legislature to fix permanently the limit [of charges] and make it a part of the charter, and, if it was refused, to abstain from building the road. If that had been done, the charter might have presented a contract against future legislative interference.

Not one of the cases cited by the committee in the report submitted sustains the principle here sought to be applied, neither does the case of Shields *vs.* Ohio. All of these cases, as before said, stripped of all unnecessary words, determine only that property that by consent of its owner is clothed with a public interest, because of its public use, ceases to be private property only, and is subject to regulation in the interest of the public, to whose use the owner has devoted it.

If it be an elevator, designed to be used by the public for the convenience of the public and the gain of its owner, the rates of storage, &c., may be fixed by law, if the owner is not reasonable in his charges.

If it be a railroad, carrying passengers and freight for the convenience and benefit of the public and gain to its owner, the public has

such an interest in its use that it ceases to be private property only, and is subject to public regulation with reference to such use and such use only; and it is immaterial whether the owner is an individual, a corporation, or an association of individuals: it is the character of the property and the business to which the owner devotes it, and not the character of the owner, that determines whether it is subject to public regulation or not.

This is all the cases referred to have decided, and I submit these cases go the extreme verge of the law governing that kind of property, and it may be well doubted whether a less liberal policy toward the public would not in the end have been subservient to the public good.

There is danger that the Legislatures of the land, State and national, may yield to the claims so recently made and that yet sound so strangely in our ears, that the owners of property have not the right to use it as they see fit so long as their use is not injurious to others.

We cannot but view with alarm the tendency of the times to demand legislative control over interests that, until recently, have been regarded as purely private in their character. Day by day, as a nation, we appear to depart further and further from the fundamental ideas of government laid down by the founders of our system of government. Every step in the wrong direction makes it easy to take another. The precedents that do not quite cover the point in hand will be made by ingenuity of reasoning to do so. Thus one error makes way for many more to follow. If an illustration of the truth of this is needed, it can be found in application of the case of the legal-tender cases to the principle on which the legislation on this bill is proposed. A case that at the most received only a bare majority of the court, a case that was declared to have decided on the exercise of the extraordinary powers of Congress, called into exercise by the emergency of a great civil war and falling within the rule I have mentioned—that is, that it may be proper to exercise doubtful powers in case of national peril—is now cited to justify Congress to exercise a power of doubtful character in a matter involving only a question of dollars and cents.

The honorable Senator from Ohio says that is the decision of the Supreme Court, and that is enough for him. The decision of the Supreme Court may prevent Congress from exercising doubtful powers, but it cannot be a justification for the exercise of a power that Congress might well think was not warranted by law.

It is said that the words "to alter, amend, and repeal" are in themselves sufficient to justify the proposed legislation. There must be some limit to the meaning of the words "alter, amend, and repeal." The Supreme Court has so held in the case of Holyoke Co. *vs.* Lyman, 15 Wallace, 522, and declare that such subsequent legislation must not impair vested rights.

The court, in Miller *vs.* The State, 15 Wallace, 498, in defining what the power was under such reservation, say "almost any change may be made in furtherance of the object of the grant." In furtherance of the object of the grant is a subject concerning which the public has an interest as well as the corporation.

But, as before stated, this is not a proposition to change the acts in furtherance of the grant. Whether the money be paid or lost in no wise affects the use of the property by the Government or the public. The principle to be applied in the passage of the bill is not different from what it would be if the proposition was to compel the compa-

nies to create a sinking fund for the payment of first-mortgage bonds, or any other debt of the companies. If the principal object is to collect the Government mortgage let us at once declare the Government debt is the first-mortgage debt and the first to be paid.

The rights of the first-mortgage bondholders to have immunity from the destruction of their property is not greater than the rights of the stockholders and other bondholders. If the income bondholder and sinking-fund bondholder took the bonds with the notice that the Government might change its contract so as to make the bonds worthless, the first-mortgage bondholder must have had the same notice.

It is easy by taking a few sentences here and a few there from the opinions of courts, to support the declaration so broadly made that the reserved power is practically without limit. Yet I believe no case, when carefully considered, will be found to support such a theory. The Supreme Court of the United States in the case of Holyoke Company *vs.* Eyman, 15 Wallace, 500, and Miller *vs.* The State, 15 Wallace, 498, declared there was a limit to the power. So said the supreme court of Massachusetts in 13 Gray, 239.

The case of Tomlinson *vs.* Jessup, 15 Wallace, has been cited as supporting the doctrine of unlimited power over the charter of a corporation. This claim cannot be supported. The controversy in that case grew out of an attempt to tax the property of a railway company contrary, as it was asserted, to the provisions of its charter, and was decided on other and different principles.

A question of similar character was presented to the Supreme Court and recently decided. I refer to the case of Farrington *vs.* Tennessee, not yet reported. In the charter it was provided that the company—a bank—should pay a certain tax "in lieu of all other taxes." The State of Tennessee claimed the right to tax the bank in another and different manner. The Supreme Court, after a careful consideration of all of the principles involved in the case, declared that the words "in lieu of all other taxes" must be construed to create a contract on the part of the State, which the State could not annul.

In view of the recent disposition on the part of courts and Legislatures to disregard the provisions of legislative contracts, this decision is one of great importance. It weakens greatly the force of the case of Tomlinson *vs.* Jessup, and puts the court in harmony with the old cases of New Jersey *vs.* Wilson, 7 Cranch, 164; Jefferson *vs.* Skelly, 1 Black, 436.

And this decision is not in conflict with the cases before mentioned, that determine that private property is affected with a public interest because of its use by the public, and is subject to public regulation.

The court takes occasion to comment on the value of contracts to the civilization and prosperity of a community, and I commend that case to the advocates of unlimited congressional power over contracts.

The reservation to alter, amend, or repeal, then, is not without its limit, as the Supreme Court has said, but it is said the Legislature may determine what the limit is. Not so. The Supreme Court fix the limit, and that must govern the legislative actions. In Holyoke Company *vs.* Lyman, the court say:

> Vested rights, it is conceded, cannot be destroyed or impaired under such a reserved power, but it is clear that the power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant, and to protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corporation.

Before that decision was rendered, the court had said in the case of Miller *vs.* The State, in speaking of the power under the words "alter, amend, and repeal:"

> Power to legislate founded upon such a reservation is certainly not without limit, but it may safely be affirmed that it reserves to the Legislature the authority to make any alteration or amendment in a charter granted subject to it that will not defeat or substantially impair the object of the grant or any rights which have vested under it which the Legislature may deem necessary to secure either the object of the grant or any other public right not expressly granted away by the charter.

It must not defeat or impair the object of the grant nor any rights which have vested under it which may be necessary, &c., to secure the object of the grant, or any other rights not granted away by the charter. Then it does appear that there may be rights in a charter expressly granted away by the charter, and as to these there is no power to amend them.

The questions presented for our consideration are questions of law under the condition of things now existing. We have nothing to do with the question of wisdom or folly of the Congress that created one of these companies and granted aid to the other. We ought to be able to act without prejudice or partiality in the interest of the Government and the companies under the law as we believe it exists. No extraneous circumstances should influence us either in determining what is right and just or what is the law.

I have heard in the course of the debate these companies characterized as "arbitrary, despotic corporations." I know there has been an effort made, through the press at least, to create the opinion that these companies are great, rich, domineering bodies, ready and willing to corrupt Congress or other public bodies if necessary to secure their ends. I do not propose to defend these companies against attacks made here or elsewhere. If we cannot act on the question here proposed without taking into consideration matters of that character, and considering as we determine the law whether it is law to be applied because the companies are bloated corporations and not because the principle of natural justice, honesty, and fair dealing combine to influence such a course, it will furnish additional evidence that a legislative body which is but the reflex of the public mind is an unsafe body to intrust with the rights of property without restriction.

Mr. CHRISTIANCY. I wish, for the purpose of knowing exactly the position of the Senator from Colorado, to put to him one question. Suppose the acts of 1862 and 1864 had, after making all the general provisions now in those acts, expressly further provided that Congress reserved the right after, say, five years from the passage of the act, to require payment of an annual interest on the loan made to the companies or to require the companies to establish a sinking fund, describing it specially as it is described in this Judiciary Committee bill, does the Senator from Colorado insist that Congress could not under such circumstances exercise such reserved rights?

Mr. TELLER. I never have taken any such position. I say that if in these charters Congress had expressly provided for such a provision as that, it would have been proper.

Mr. McDONALD. Mr. President——

Mr. SARGENT. I believe it was the order of the Senate that on the conclusion of the speech of the Senator from Colorado the Senate should resume the consideration of the appropriation bill which was under discussion yesterday.

Mr. McDONALD. That I understand to be the order.

The PRESIDING OFFICER, (Mr. INGALLS in the chair.) The Chair understands that to be the order of the Senate, and that the Senator from Indiana takes the floor upon the sinking-fund bill, to be heard when its consideration is resumed.

Mr. MCDONALD. Yes, sir.

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MARCH 22, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

The VICE-PRESIDENT. Upon this bill the Senator from Indiana [Mr. MCDONALD] is entitled to the floor.

Mr. MCDONALD. Mr. President, on the 1st day of July, 1862, Congress passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." By the first section of that act the Union Pacific Railroad Company was incorporated, with authority to construct a road or roads from the Missouri River to the western boundary of the Territory of Nevada. The third section of the act granted to this corporation the alternate sections of land for five miles on each side of the line of their proposed road, reserving all mineral lands.

By the fifth section it was provided that subsidy bonds should be issued by the United States to the amount of $16,000 per mile upon the completion of each section of forty consecutive miles of the road, and to secure the repayment to the United States of the amount of said bonds so issued and delivered to said company, together with all interest paid by the United States thereon, the issue of said bonds and the delivery to the company was declared *ipso facto* to constitute a first mortgage upon the line of the road and its property.

The sixth section stated expressly that "the grants aforesaid are made upon the condition that said company should pay said bonds at maturity and should keep said railroad and telegraph line in repair," &c. It also provided that "all compensation for services rendered for the Government and 5 per cent. of the net earnings of said road should annually be applied to the payment of said bonds and interest until the whole amount is fully paid."

Under the ninth section the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, was authorized to construct a railroad and telegraph line from the Pacific coast to the eastern boundary of California upon the same terms and conditions as those extended to the Union Pacific; and by the tenth section the Central Pacific Company was authorized to extend its line eastward from the east line of the State of California until it formed a junction with the Union Pacific.

The eleventh increases the amount of subsidy bonds to three times the quantity provided for in section 5, for three hundred miles of said road, being one hundred and fifty miles of the line constructed by the Union Pacific Railroad Company and one hundred and fifty miles of the line constructed by the Central Pacific Railroad Company, and authorizes the delivery of said bonds upon the construction of twenty consecutive miles; and between the sections last named of one hundred and fifty miles each the amount of bonds issued should be double the amount per mile of those authorized under the fifth section to be issued; to be delivered also upon the construction of every twenty consecutive miles.

In the eighteenth the power of Congress to reduce and regulate fares under certain circumstances is affirmed, and the right is reserved to alter, amend, or repeal the act when at any time it may become necessary to better accomplish the objects therein named.

It is conceded, Mr. President, that under this act no particular action was taken by the railroad companies, and that for two years this remained almost a naked grant or offer for the organization of these companies and for the construction of the road therein provided. On the 2d day of July, 1864, an amendatory act was passed. It was declared to be an amendment to the act of July 1, 1872, making very great changes, extending very great additional privileges and bounties to these railroad companies.

The first section of that act reorganized the Union Pacific Railroad Company, provided for a different capitalization, and almost formed a new company.

By the fourth section the land grant was increased from alternate sections for five miles on each side of the road to alternate sections for ten miles on each side of the road, and the term "mineral lands" was defined not to embrace iron and coal lands, so that the reservation in section 3 in reference to the original land grant was modified so as to grant to these companies all lands upon which there might be iron ore or coal.

The act of 1862 had provided that the whole transportation account should be credited up in favor of the Government as it accrued until the whole of the interest and of the principal of the bonds loaned to the companies should be repaid; but by the fifth section of the act of 1864 it was provided that only one-half of the Government business should be so applied.

Section 7 of the act of 1864 also repealed so much of the seventeenth section of the act of 1862 as provided for the reservation by the Government of a portion of the bonds to be issued in aid of the construction of the road.

Section 8 authorized a portion of the bonds to be delivered to the Central Pacific as the work progressed and before the final completion of the divisions to which they applied.

Section 10 authorized the issuance by the companies of first-mortgage bonds of like tenor and date with those issued by the Government to the companies and of equal amount, and provided that they should constitute a first lien superior to that of the Government upon the property of the companies. It also changed the provisions in reference to the delivery of these bonds so as to deliver to the companies their quota of bonds for each twenty miles of the line that might be completed. Section 16 authorized the consolidation of companies and extended the same rights to the consolidated companies as were granted to the original companies; and then the amendatory act closed with the twenty-second section, by which the power was reserved

to Congress to at any time without any limitation "alter, amend, or repeal this act."

It is known, of course, that under this last act connected with the rights and privileges that had been conferred in the first, these railroad companies did construct a road from the Missouri River to the Pacific Ocean, a line nineteen hundred miles long; that of this line the Union Pacific Railroad Company constructed one thousand and forty miles, or rather they constructed about eleven hundred miles extending to Promontory Point, but by a subsequent act of Congress adjusting the questions between the Central and the Union Pacific, the Central Pacific paid the Union Pacific for that portion of the line west of Ogden, and the junction was made at Ogden in the valley of Salt Lake; so that the present line of the Union Pacific Railroad Company terminating at that point is about one thousand and forty miles, the length of the line of the Central Pacific, including the Western Pacific with which it is consolidated, is eight hundred and sixty miles, extending from Ogden to the Pacific coast.

The fifth section of the act of 1862 contemplated aid in the way of bonds to the extent of $16,000 per mile, and by the eleventh section, as applied to that portion of the road lying between the Rocky Mountain range and the Sierra Nevada Mountains, double that. The amount of subsidy bonds were given, and for three hundred miles of the road, being that portion over the Rocky Mountains and Sierra Nevadas, treble the amount. Under these grants the railroad companies received from the United States, the Union Pacific Railroad Company on a length of one thousand and forty miles, subsidy bonds amounting to $27,236,512, an average amount per mile of $26,189. The Central Pacific, including the Western Pacific, for a length of eight hundred and sixty miles, received subsidy bonds amounting to $27,855,680, being an average amount of $32,390 per mile. These subsidies were not gifts; they were aids, aids that were to be repaid to the Government, and in regard to that the language of the act is very explicit. Section 5 provides:

> And to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued.

And then again in the sixth section:

> That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any department thereof.

So that in each of these sections the first obligation imposed upon the companies was the repayment of the loans. The Government had granted to the companies lands, first alternate sections on each side of the line for five miles, and then doubling that, reserving in the first instance all mineral lands and then releasing from that reservation the coal and iron lands that might be within the limits of the grant. These were donations; these lands were given to the companies; but the loan of the Government credit in the issuance of the bonds was a loan to be repaid; and the stipulation for its repayment stands ahead of all other conditions. There were provisions made in these acts for repayment to a certain extent. Five per cent. of the

net earnings was to be applied as it accrued to the payment of the interest and principal of this debt; also one-half of the Government service was to be applied in the same way. These were to be made currently as they accrued, and then the Government held its claim, as modified by the act of 1862, as a second mortgage subordinate to a first equal in amount upon the line of the road, all the property and rolling-stock owned by said companies and used in connection with said road.

It seems to me the first inquiry to make is: Are the present provisions for the repayment of this debt sufficient? Has the debt been sufficiently provided for? For, if it has been sufficiently provided for and is now reasonably secured, no further exactions ought to be made. If in the laws as they stand the Government has provided a sufficient security, or if the provision for payment currently taken with the security makes this debt secure, then of course there ought to be no further legislation on the subject at this time. To determine that, let us see how the account stands between the United States and these companies and how it will stand when these bonds mature.

I have already stated that the subsidy bonds received by the Union Pacific Railroad Company amounted to $27,236,512. Up to the 31st day of January, 1878, the United States had paid in semi-annual installments the interest that they were required to pay on the bonds loaned that company the sum of $15,969,801. The Government had received credit from the company on account of transportation $5,134,327. There were credits claimed, but not yet allowed, amounting to $2,899,652. So that of credits allowed and claimed there are $8,033,969, leaving, however, for interest paid, interest which the Government has not been reimbursed, the sum of $7,935,822. The Government pays annually in semi-annual payments interest upon the subsidy bonds held by this company $1,634,190. Now, if we credit the Union Pacific Railroad Company with the most that we can expect to realize currently under existing laws, taking the 5 per cent. and the one-half of the Government transportation, it will not probably exceed $634,190; so that each year the Government will pay out $1,000,000 in interest over and above what she receives back upon the application of the credits under existing laws. These bonds have now about twenty-two years to run, so that in the year 1900 this interest account for money actually paid by the Government over and above reimbursements will amount to $22,000,000 in addition to that which is already in arrear. If you add that to the amount now due, which is $35,172,333, you have the sum of $55,172,333, and that without computing interest to the Government or the interest that she has paid, or is to pay, on the semi-annual installments due on her bonds loaned the company. If you count interest upon that, you would add the sum of $23,858,679, making a total debt in the year 1900 of $79,031,012. That would be $76,952 per mile.

So stands the account between the United States and the Union Pacific. Let us see how it stands between the United States and the Central Pacific. That road, together with the Western Pacific, forming the line from Ogden to the Pacific coast, has received in subsidy bonds $27,855,680, as before stated. On the 31st of October, 1877, the latest date to which we have any data on this subject, the interest that had accured on these bonds and been paid by the Government, over and above what she had been reimbursed by crediting the 5 per cent. of net earnings and one-half of Government service, amounted to $12,519,447 for the Central Pacific and $988,891 for the Western Pacific, making an aggregate of $13,508,338. Now if we credit the

amount of interest which the Government pays upon these bonds annually $1,671,340, with the probable credits, under existing laws, putting them up at the highest point which the present data before us will authorize, say $500,000 per annum, being the 5 per cent. of net earnings and one-half the Government service, it will leave the United States as paying out annually $1,171,340 more than she receives. That paid for twenty-two years up to 1900 would amount to $25,769,480. Add that to the present deficiency and you have the debt at that time $67,133,486, without counting the interest in favor of the Government for the interest she has to pay semi-annually; but if you give her credit for that you must add the sum $82,630,415, making the debt, interest and principal, in the year 1900 against the Central Pacific Company $86,763,913. That is $111,350 per mile.

Now, Mr. President, let us bring these totals together and see how this account stands. The debt in the year 1900 will be:

| | |
|---|---|
| Union Pacific, without interest | $55,172,333 |
| Central and Western Pacific | 47,133,498 |
| Making an aggregate of | 102,305,831 |

If you add interest on the interest which the Government will have paid during that time, you swell this sum to $174,794,925, and this is the least that will fully reimburse the United States for her outlay in the premises.

So stands the account, Mr. President, between the railroad companies and the United States in reference to the subsidy bonds, after making application of all that the law at present provides for the payment of current interest and principal of the bonds when they become due. Are the securities held by the United States sufficient to meet that? Will any person contend that these roads, with the equipment that may be upon them at that time, will be a sufficient security to pay this enormous debt and discharge the first-mortgage bonds resting upon them for an equal amount of principal? In the statement made before the Judiciary Committee when these questions were undergoing investigation there, Mr. Huntington, the vice-president of the Central Pacific Railroad, very frankly said it would not. In fact, he said that if the continued depreciation of property should go on, it was doubtful whether the property would be worth the first-mortgage bonds, much less the claim of the United States increased by the amount of interest that she is compelled to pay. Therefore it seems to me that the first proposition must be settled in the negative; that is, that the present provisions for the payment of this debt and the securities taken for that purpose are insufficient.

I have been asked the question whether the Government had a right to charge interest upon the interest which she has semi-annually to pay. Generally interest is not payable unless there is an agreement to pay interest; but it is as lawful at common law to contract for the use of money as it is for anything else. Statutes declare that no more than so much shall be taken. Moralists have spoken against the laws of usury; but still immemorially a usance for money, a price to be paid for its use, has been as much a matter of agreement between parties as for the use of any other kind of property.

Was there an agreement to pay interest or an agreement that should bind these companies to pay interest on the payments which the Government has made? In 1 Otto, the Supreme Court decided that the companies were not bound to pay the interest paid by the Government until the bonds mature, giving, I think, a rather undue importance to the language of the sixth section of the act of 1862; but still

that is the decision; it does not decide, nor is there any implication from that decision that I can see, that these companies are not required to make the United States whole. Their obligation is to pay these bonds and the interest thereon which shall have been paid by the United States. When does this payment of interest become a debt, a debt against these railroad companies? When the United States pays it. Whenever the United States is called upon to pay and does pay upon the bonds that she delivered to them a semi-annual installment of interest, immediately upon that payment it becomes a debt against those companies in whose favor it has been paid, a debt which under the decision of the Supreme Court they are not required to discharge until the principal of the bonds shall become due; but still it is a debt *in præsenti*. What was the understanding of the parties in regard to that debt and how was it to be reckoned between them? We can understand a good deal of that by turning to the tenth section of the act of 1864. This section is the one which authorized the issuance of a first-mortgage bond as it has been called, and I read it in connection with this question of interest, to show what the intent and purpose of the parties must have been at that time, and what was in the mind of Congress when this provision was placed there. It is as follows:

That section 5 of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first-mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively.

"Of even tenor and date" of the bonds we were to deliver to them of like character as to interest. When the railroad companies issued these first-mortgage bonds and stipulated as they did in the bonds to pay interest upon them semi-annually and have so paid it, I ask if it was not expected that they should in like manner pay or provide for the interest due on the bonds loaned them by the Government, and if the payment of the interest as well as the principal should be deferred until the bonds matured that the companies should make the Government whole? How else could the Government be fully reimbursed for all the interest she had paid, thereby paying her interest on the money thus advanced by her? Take this whole legislation together, consider this in the nature of a loan as it was, for the bounties were out of other means, and you can view it in no other light than an agreement of the parties that whenever the United States paid out money for these railroad companies at that instant the obligation to repay it should begin on the part of the railroad companies. They might solve it then or they might wait until the bonds were due; but was it in the apprehension or in the contemplation of those who passed the act that the Government should lay out of the money so paid without any interest a period of thirty years? There can be no question that they would be responsible for interest on their own bonds or coupons after they became due. Do they not hold this loan from the United States on the same terms? Is not the reimbursement to be made to the United States as it is to their other bond creditors, or are these bond creditors to be considered the favorite parties in the appropriation of the income and revenues of this property?

But, Mr. President, it is not necessary in determining the question before the Senate to settle that point now or to attempt to give any particular construction to the statutes that have already been passed

on that subject; for it is evident that without that the securities now held by the United States and the application of credits she is entitled to claim under existing law will not meet even the principal of the debt, without charging up anything at all for interest.

The next important question is whether we have power to make additional provisions for the payment of this debt. In the original act there was a power reserved by the eighteenth section, a power that has been said to be special and limited; yet, as it embraces the whole subject and gave discretionary power to Congress to act in the premises, it is very difficult to see why it should be insisted that there was a want of power under that. But it is not necessary to place this question there, for the last section of the act of 1864 is without limit. The amendatory act of 1864, which took away from the United States her first lien upon this property in favor of first-mortgage bondholders to an amount equal to her own debt and allowed these companies to pledge the property for that purpose, did not conclude until it had reserved full and ample power in the United States over the subject. I shall not discuss this question of power upon abstract questions of the authority of a sovereign, nor how much power the United States may possess over the subject of contracts not being embraced in the inhibition in the Constitution directed against the States. I shall put it upon no ground of that kind. I believe the Federal Government to be one of limited powers. I believe in the tenth section of the amendments, which declares that the powers not granted to the Federal Government in the Constitution do not exist in the Federal Government, and it is not necessary that inhibitions against States and State constitutions and State legislative authority should be leveled at it, for it must look to the charter of its own authority for the power that it exercises. But it would be very difficult to show that the United States possessed power to create that which they could not control. If there is a want of power here, it might extend further back and show that Congress had no power to confer these franchises, these rights and privileges at all; and therefore we can recall them all. The enactment of these laws may have been an exercise of an authority not granted and therefore void; but I shall consider it the right of the Government to do what the bill proposes upon these acts themselves and the two sections to which I have referred.

It has been admitted by those who have opposed the bill submitted by the Judiciary Committee that these two acts now constitute one; that the act of 1864 being amendatory of the act of 1862 they are blended and become one act; but, says the distinguished Senator from Ohio [Mr. MATTHEWS] who has presented a substitute for this bill, to which I shall call attention after a while, the twenty-second section is but a naked power, and you must therefore go to the eighteenth section of the act of 1862 for specifications of that power. In other words, the general terms of the repealing act of 1864 are to be controlled by the previous legislation on the subject. A naked power to repeal or alter or amend is certainly a novelty; but that it should be controlled by the provisions in a former law is a new canon of construction to me, especially when you take this fact into consideration: that in this act of 1864 large bounties were given to these railroad companies in excess of those provided in the act of 1862; great advantages were extended to them, and then the power to mortgage the very property upon which we were taking our lien for an amount equal to the debt we were creating against these companies, and then to say that when we reserved the right to alter, amend, or repeal, without limitation or

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qualification, must be carried back to the act of 1862 for a limitation upon that power, would be to give to the companies all of the increased benefits of the act of 1864 freed from any of its restraints.

Again, it is said that the authority to alter, amend, or repeal extends to nothing but what are termed franchise rights. In my opinion, Mr. President, it extends to every benefit that these railroad companies have received at the hands of the United States; so far as it is necessary to control and regulate those benefits for the public welfare or for the security of the United States, I do not contend that the rights of third parties are to be affected, but I say that these debtor companies, who owe us these moneys and who have obligated themselves, under the laws and by the receipt of the moneys, to repay them, cannot be heard to say, when we have reserved a right to alter, amend, or repeal the law, that this right shall not apply to such amendatory laws as may be necessary to secure repayment of money, such as the exaction of additional securities for that purpose.

But again, it has been said that, if this specific power had been reserved for further assurance or something of that kind, then it might be exercised; but, because the power is general, therefore it cannot be made to reach specific things. I have always understood, Mr. President, that the greater included the less. Specifications cannot enlarge general powers. Specifications may sometimes, where they are found in connection with general powers, direct and control them, but they cannot give specific powers that may not be embraced by a general authority. When you constitute one your attorney in fact, you may make him your attorney for all purposes; you may make that power of attorney general, to act for you in your name and stead in all matters relating to your affairs. You are not required to make it specific; and, if you make it general, it will cover any act which might be done or performed under the most minute specifications of authority.

So, Mr. President, it seems to me that upon the very face of these laws the right and power reserved in Congress to alter, amend, or repeal may be exercised, and in my opinion ought to be whenever it is necessary either to secure the ends connected with this enterprise so far as the public interest is concerned, or to secure the repayment of the moneys that we have loaned the companies. This the Congress of the United States, as the guardian of both interests, must do. It is not money given, it is not a donation made, but it is a loan, and we are as much bound to protect that and to see that it is repaid again, if it can be, out of the property or the income arising from it or from the parties who have obligated themselves to make it good, as we are to see that this public service is not interfered with or neglected.

I admit that this power ought to be exercised judiciously, fairly, and properly; that there ought to be such additional and further guarantees or such further assurance as it is in the power of these companies to perform. I would not vote for a measure that I did not believe was within the ability of these companies. But what would be right and just; what kind of measures would we have a right to resort to as between us and the debtor companies? I lay down this proposition, that any provision would be just that did no more than withhold present dividends from stockholders, if necessary to secure the repayment of the loan. In my opinion, the stockholders of these companies have no right to dividends while that loan is in jeopardy. What right have they to enrich themselves by the income of this road, by dividing it as dividends on their stock, while these bonds

and the interest we are paying semi-annually on them are every day being put in jeopardy, thus taking the money earned by the property created by the aid of the loan to enrich themselves instead of using it to provide for its repayment?

The bill submitted by the Judiciary Committee is far inside of that proposition. The statistics that are embraced in the report made by the committee accompanying the bill show that all we require at their hands to provide for and secure the ultimate payment of the debt will still leave out of the annual receipts of the companies a surplus to be divided among the stockholders of from 4 to 6 per cent. on the value of their stock, which is more than one out of a hundred of the railroads of the country are able to do. If there was a necessity for it we could say they should receive nothing. They are debtor companies. The stockholders represent the companies; they have no right to dividends while the debts of the companies are unprovided for. But as it is not necessary the bill under consideration does not propose to place so heavy a burden on them; while it provides for the payment of the debt it leaves them ample means, and should, in my opinion, receive the approval of the Senate.

Now, Mr. President, a substitute has been proposed for the bill under consideration. It comes here as a substitute for the bill reported by the Committee on Railroads, reported by my distinguished friend from Ohio, [Mr. MATTHEWS.] I wish to consider that bill for a short time. There is no misunderstanding its provisions; it is perfectly plain. There is not the slightest ambiguity about it. It proposes to make an adjustment with these railroads at present, closing the account under the present laws on the 1st of October, 1878, and crediting up what the Government may then be entitled to, and from that time on until the year 1900 each of the companies are required to pay into the Treasury of the United States $1,000,000 per annum in semi-annual payments, and in the year 1900 these semi-annual payments with the interests accrued on them and compounded every six months shall be credited on the amount due from the railroad companies to the United States, excluding interest on the sums paid by the United States as interest, but providing for the payment of interest on the bonds where any of them are overdue at that time, and then the balance remaining to be divided into fifty semi-annual payments extending over a period of twenty-five years.

These are the main features of the substitute. It is offered as a proposition to the railroad companies for their acceptance, to be valid as a law provided they accept it, to be of no value if they do not accept it. My first objection to it is that it is a solemn admission of a want of power in the Government to provide for the payment of the loan except by the consent of the companies. It solemnly admits that the reservations of power contained in the acts of 1862 and 1864 give us no authority, however apparent it may be that the securities we hold are insufficient, to make any provision for the payment of the loan out of current receipts, or to provide a sinking fund out of such receipts unless the companies will agree to it. I shall never assent to that proposition in any legislation that may come up here in regard to these or other corporations of a similar kind where such powers are reserved. I shall attempt to exercise those powers here as I believe the public interest may require; and if it shall ever be determined that we have no authority to legislate in that way, that determination will have to be made in another and co-ordinate department of this Government. I shall not surrender at the very beginning the right to control such corporations as these whenever it may be found

necessary to protect the people or the creditors of the corporations. I shall not at the very beginning declare that our hands are bound and that we can do nothing for the protection of money we have loaned them but such acts as they are willing to consent to.

My second objection to it is, that it puts all present payments the companies are bound to make under existing laws at compound interest, and that the compound interest that would accrue on such payments would amount to about $23,858,679. In this calculation, I assume that these companies would pay in under the present law a sum equal to about $1,000,000 a year; that is, that the 5 per cent. of net earnings and the one-half of the Government transportation account for the two companies would amount to about $1,000,000 per year—the amount would, in all probability, be much more. The substitute of Senator MATTHEWS, on which I am now commenting, proposes that these sums shall no longer be applied currently, but that they shall become a part of the $2,000,000 a year that these companies are to pay after the 1st of next October—$1,000,000 from each company. So that from that time forward these sums that are now to be applied currently will be at compound interest, and if they amount to no more than the sum as I have stated, the interest will be equal to $23,858,679.

Mr. BUTLER. For both companies, or one?

Mr. McDONALD. For both companies. It is compound interest on $1,000,000 a year, which is the aggregate of what I suppose the two companies will pay in under the present law. A bonus of nearly $24,000,000 for accepting a proposition which is to tie up our hands for all time.

Then it gives the companies compound interest on all payments that they will make in addition, that is for the additional million that they are to pay per annum; they are also to have compound interest at 6 per cent., and that is $23,858,679 more; so that the total interest credit that will be given these two companies in the year 1900 will be $47,717,358 in interest on $22,000,000 paid, in addition to the amount they would pay under the present law for which they would draw no interest.

This bill also provides that they are to have four months in which to determine to accept the proposition. It will take them four hours to decide that question. I have no belief that this bill would become inoperative if we should pass it, by reason of their refusal to accept it; and therefore it is necessary for us to consider very carefully the question before we begin by tying up our hands by solemnly admitting that we have no authority at all to make any change except by the consent of the companies, however necessary it may be, on account of the insufficiency of the security we now hold, rendered insufficient by the act of 1864, by authorizing the placing over the property a first lien to an amount equal to that which we ourselves hold.

I have had a calculation made to show the amount of credits these companies would be entitled to in the year 1900, when we come to apply the sinking fund this substitute provides, and to extend the time for the balance that might remain due over this period of twenty-five years. If the Union Pacific Company should pay in its million a year, beginning on the 1st of October next, and continuing that for twenty-two years, say $500,000 semi-annually, the interest computed on this sum every six months and added to the principal would make the first payment of $500,000 when it came to be credited up at the end of twenty years amount to $1,835,686, and their whole credit, interest and principal, on the $22,000,000 in the twenty-two years would

amount to $45,858,679.88. The Central Pacific Railroad Company would be entitled to an equal credit on the same terms and for the same class of payments, so that you would have these two companies credited in the year 1900 with an aggregate sum of $91,717,359, and for that they would have paid into the Treasury of the United States during the twenty-two years $44,000,000. Under the present law one-half of that sum would have to be paid without interest, so that these companies would be credited with $47,717,359 as interest for $22,000,000 additional payments.

Mr. THURMAN. More than half.

Mr. McDONALD. Yes, more than half; but I am putting it at that so that I may do no injustice to the companies. This is the proposition, and it is very much like this, Mr. President: If I owed you $10,000, secured by bond and mortgage, and I should say to you: "The security that you have is not good; it will not be worth the money when it becomes due. I am deriving large incomes from the mortgage property, but that I want to keep. I will now give you a thousand dollars and you keep it and charge yourself with compound interest on it until it amounts to $10,000, and then you would have your payment."

Mr. President, I have no belief at all that this proposition will meet with any great favor in the Senate. I believe fully and firmly in our right to exercise the power that we are seeking to exercise in this case, and I believe, as the proper trustees and guardians of the public interest, it is our duty to do it.

Mr. WINDOM. I believe it was understood the appropriation bill should be in order immediately upon the conclusion of the speech of the Senator from Indiana.

Mr. THURMAN. Yes. It is understood, however, that the railroad bill is to be laid aside informally.

The PRESIDING OFFICER, (Mr. MITCHELL in the chair.) That is the understanding.

Mr. MERRIMON. I desire to submit some remarks upon the pending bill, and would be glad to have the opportunity to do so when the Senate shall take the bill under consideration again.

The PRESIDING OFFICER. The Senator from North Carolina will be recognized on the funding bill when it shall again come before the Senate.

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MARCH 26, 1878.

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THE PACIFIC RAILROADS.

The VICE-PRESIDENT. The morning hour has expired, and the Senate now proceeds to the consideration of its unfinished business, being the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, on which the Senator from North Carolina [Mr. MERRIMON] is entitled to the floor.

Mr. MERRIMON. Mr. President, I am without motive and I am not conscious of any desire to deprive the railroad companies mentioned in the pending bill of any measure of justice to which they may be fairly entitled, or to impose upon them any unreasonable burdens. I am willing that they shall have all which of right belongs to them. In my efforts to learn what their rights are in their relations to the Government, I wish to pay due regard to the rights and interests of the latter, and I will not allow my judgment and my action to be controlled by empty declamation, false notions of public generosity, and a misapprehension of facts and law. Nor will I consent to be driven into the support of one measure and from the support of another, by oft-repeated threats, whether made in or out of this Chamber, of long-protracted and expensive litigation. My fixed purpose is, to seek and find the pathway of truth, justice, and sound policy and to walk steadily in it, trusting confidently that fruitful and wholesome results will follow.

The corporations named, now as in the past, assert with defiant confidence and insolent self-sufficiency what they and their friends are pleased to call their rights and advantages as against the Government. It is pertinent and worth while to inquire with some particularity into the merits of the claims and pretensions of these corporations and the conduct and practices of those who control them and see whether or not these are really meritorious and well founded; or whether, on the contrary, the controlling corporators have been and are for the most part utterly without merit; have grossly and persistently perverted and prostituted their corporate powers and perpetrated stupendous frauds upon the Government, and thereby unjustly and greatly enriched themselves and others at the expense of the people of the Union. In my judgment, it is not only pertinent, but likewise very important to make these inquiries and learn the spirit and practices of these corporations from the beginning of their existence down to the present time, in order that we may learn and appreciate the absolute necessity for the adoption of the measure proposed by the Committee on the Judiciary, or one more stringent, if upon due inquiry the Constitution and the state of the law will allow of it. In view of the vast interests of the Government and the people, pecuniarily and otherwise, involved in the subject before the Senate, I must be pardoned for expressing my surprise that the committee in their report have failed to call attention specially to the practices of these corporations. I undertake to say and shall briefly endeavor to show, that these have been monstrous, without a parallel in this or any country, and shocking to the moral sense of the American people.

Mr. President, I do not question the usefulness, the public benefits derived from and the general importance of corporations. They serve great purposes in the economy of society, and have contributed largely, within the last century, to the advancement of civilization and the promotion of the prosperity and happiness of mankind. They are the chief means for organizing and making efficient co-operative effort in the employment of capital and labor. Through them capital is aggregated, organized, consolidated, and brought within the control of small numbers of intelligent and powerful, unhappily, sometimes, very corrupt men, and thus it is made effective for great good, too often for evil. But if they have vast capabilities for the advancement of the prosperity of great communities, they likewise afford opportunity to do, and often do them, great harm. Their history shows that, uniformly, when they are unregulated, unrestrained, and uncontrolled by the strong arm of Government they corrupt public men,

foster and establish burdensome monopolies, and often become tremendous engines of illicit power and wide-spread oppression. Through such instrumentalities, the cupidity and avarice of designing men achieve their most signal triumphs.

In this country corporations have multiplied wonderfully within the last fifty years. They may be numbered by the thousand, and they embrace nearly every branch of industry and business, and embody the great mass of capital. Well authenticated statistics show that there are now in the United States more than two thousand national banks, all corporations embodying and controlling nearly $2,000,000,000, more than forty-five hundred banks, most of them corporations other than national banks, aggregating $225,000,000 of capital stock, and deposits amounting to more than $1,350,000,000; that there are more than fifteen hundred railroad corporations embodying and controlling $5,000,000,000. There are several thousand other manufacturing and business corporations that control several hundreds of millions of dollars. That a large percentage of this vast number of corporations, embracing some of the largest and most influential, have not been wisely and sufficiently guarded and restrained by law; that they have in many instances prostituted their corporate powers for their own illicit gain, and to the grievous detriment of the Government, State and Federal, and the people generally; that they have unduly and arbitrarily combined and confederated to direct and control industries, trade, travel, and commerce; that they have virtually destroyed the trade of one town or locality in order to build up another to serve selfish purposes of gain; that they have in some instances combined to exact oppressive freights and fares from the producing classes of the country, and in others, in the absence of competition, have exacted them; that they have debauched and unlawfully controlled legislative bodies and hundreds of public men in and out of official stations; that these evils have been flagrant and prevailed to an alarming extent, that they now prevail to a greater or less degree, no intelligent observer can deny: their existence has been made manifest by legislative and judicial investigations, and the newspapers of the country daily teem with accounts of them.

The facts are patent. These vicious practices have not only affected injuriously the substantial interests of the Government and the people, they have likewise given rise to disgraceful public scandals that have brought open reproach upon the good name of this country at home and abroad. These things have not been done in a corner: they have prevailed in all sections and have afflicted the people in every quarter of the Union. It seems to be taken for granted that corporations are not only soulless but, as well, that they have no moral responsibility, and that no person is or can be morally responsible for the character of their acts. This latter view is certainly false and pernicious, but it shows the greater necessity for careful and stringent legislative control of such artificial bodies.

Mr. President, I do not hesitate to declare my conviction, that one of the great rising public dangers in this country now is the undue, ever-increasing power and influence of corporations over the material, moral, and social interests of the people.

This subject ought to attract a large share of public attention and engage the serious consideration of every legislative body. I do not underrate the advantages and benefits, public and private, of railroad corporations. I recognize them. I am not hostile to them. I would not, I will not hesitate to protect them in all their just rights, but I see and know and appreciate the high importance of keeping

them well guarded by proper legislation and in subordination to government. They have great capacities for evil as well as good. They are close to the people and affect them materially in almost all the relations of life. Much the greater part of the evils to which I have made reference have been the fruits of the vicious practices of railroad corporations and their agents. Every intelligent observer knows that they have in large measure dominated the industries, the trade, the travel, the commerce, the legislation, the public men, and the press of this country. Not infrequently they have debauched members of Congress and members of State Legislatures, they have repeatedly subsidized numbers of powerful newspapers, they have set up and pulled down public men, they have walked boldly and insolently into the Halls of Congress and undertaken to dictate measures of legislation. Nay, sir, if one may trust what he reads almost daily in the newspapers and hears on every hand, their agents and lobbyists throng the corridors and lobbies, and have for months, of this Capitol, in reference to the very measures now under consideration.

Sir, are these things true? Are they substantially true? Alas, they are too true! The mind sickens with disgust at the thought of them! The recital of them must fill every honest man with indignation.

Mr. President, there could scarcely be a more striking illustration of the truth and force of all I have said than the history and practices of the two corporations involved in this discussion. I propose to make some reference to them in the course of my further remarks, for the purpose, specially, of showing the necessity for passing the measure before the Senate, and, generally, the importance of guarding here and elsewhere against the evils to which I have in a very general way directed attention.

Mr. President, the corporations whose nature, rights, and obligations are under discussion are not ordinary ones, nor do they in the eye of the law stand exactly on the same footing as do ordinary ones. They have been created by virtue and in pursuance of acts of Congress. Congress has no power to create corporations for ordinary purposes. It has, indeed, been questioned whether it has power to create them at all; but the courts have decided otherwise, and I think correctly. But it can only create them in aid of the execution of some power in or purpose incident to and necessarily connected with the Government. They can be created only for national purposes, purposes of the Government. The Government of the United States was instituted for certain general purposes common to all the States composing the Union, and these purposes and the powers in aid of them are plainly expressed in a written Constitution. We look in vain for any provision or power express or implied, authorizing Congress or any other authority in the Government to create a corporation in the ordinary sense or for ordinary purposes. The existence of such a power is unnecessary. In reason, it contravenes the genius, the spirit, the nature of our Federal system. All corporations created by Congress are therefore, without any express statutory provision, very like public corporations.

I will not now say—it is not necessary for my present purpose that I do so—that such corporations are absolutely public corporations and subject at all times to be abolished, changed, and modified by Congress, but in many respects they are so subject to the will of Congress. This much, however, is true beyond question, that Congress cannot divest itself of the power at all times to control and direct

such corporations in all reasonable ways in aid of the purposes for which they were created; this power exists, and that too without any reservation of power in the act of incorporation; the power is absolutely and forever in Congress; it cannot part with it; Congress cannot abdicate a power of government. And whoever becomes a corporator in such a corporation does so agreeing by necessary legal implication that Congress may always exercise such power; that is, the power to change, modify, or abolish the corporation, having due, reasonable regard for the personal rights of the corporator. And so in the cases now before us, without any reservation of power in the acts creating and authorizing the corporations, Congress might change, add to, amend, modify, abolish the corporations in aid of the execution of the powers, the essential powers of government, which Congress cannot impair or barter or bargain away. If this were not so, Congress might impair, render nugatory, practically destroy an essential power of government by bargain—contract. This cannot be, in the very nature of things. The powers of this Government are essential powers to be employed in the execution of government, as contradistinguished from those powers of government employed in regulating the ordinary business transactions, rights, and relations of society.

The acts of Congress creating the corporations named in the bill rest upon and recognize the principles of the Constitution to which I have adverted.

Mr. SARGENT. Which corporation does the Senator refer to, those named in the bill?

Mr. MERRIMON. The Union Pacific Railroad Company and the Central Pacific Railroad Company.

Mr. SARGENT. Is not the Senator aware that the latter was not created by Congress?

Mr. MERRIMON. I am aware that originally the company was a corporation created under the laws of California.

Mr. SARGENT. It is, and operates under the laws of the State of California.

Mr. MERRIMON. But I take it the State of California has assented to the legislation of Congress, and at all events the acts of Congress, so far as they affect that corporation, are under the control of Congress. And besides, that corporation, I apprehend, derives much of its powers in the State of California and in the State of Nevada from the force and life-giving power of the two acts of Congress under discussion.

Mr. SARGENT. I only wanted to draw the Senator's attention to the fact that he apparently was confounding a corporation created under the laws of a State, having all its functions from that State, with another created under the laws of the United States.

Mr. MERRIMON. I was perfectly advertent to the fact, and I have considered it. If the State of California authorized the creation of a corporation and Congress co-operated with the State of California to create that corporation for the purposes of the Federal Government, and the State of California and the corporation accepted the legislation of Congress and agreed to act under it, then they are under the control of Congress, certainly to the extent of the legislation in that behalf.

Mr. SARGENT. I do not wish to disturb the Senator, but I hope he will allow me to make a remark.

Mr. MERRIMON. Certainly.

Mr. SARGENT. The corporation was born in the State of California, derives all its powers as a corporation, all its franchises from

the State of California. It contracted with the Government of the United States under certain legislation passed by the Congress of the United States, and to that contract the State of California by subsequent legislation assented; but it is not true that the Central Pacific Railroad Company derives any of its corporate functions from the Congress of the United States; and if it does, I ask the Senator to refer to the clause of any statute of the United States which gives any additional corporate function to the Central Pacific.

Mr. SAULSBURY. The road was authorized by Congress to go through the Territory of Nevada.

Mr. SARGENT. It unquestionably owns a railroad which runs from San Francisco through to Ogden, and a large portion of it was built under this contract, projecting it into the Territories. Of course it was built under this contract, which was according to the laws of Congress.

Mr. BAILEY. I ask if the Central Pacific Railroad Company exercised any of its faculties or could have made any progress whatever in respect to that portion of its road which lay without the State of California without the consent of the Congress of the United States; or in other words, whether in respect to that portion of its road lying east of the eastern boundary of the State of California it does not derive all its authority and all its franchises from the act of Congress?

Mr. SARGENT. No, sir; it does not derive any authority or any franchise from Congress, except the mere authority to build a railroad in the Territories, which was done, as I say, under a contract, they agreeing to do it within a certain time and in a certain manner, that it should be open to Government uses for certain purposes, and the Government contracted therefor to issue so many bonds. That was all. It was a matter of contract; but it was not a part of the functions of the corporation in any sense; it then was a complete corporation in every sense. It might as well be said that a company owning a line of steamers and receiving a subsidy to run from New York or somewhere else to Brazil derives its corporate powers from the fact of a subsidy being given by Congress. It is simply a contract.

Mr. BAILEY. The capacity to exist as a corporation unquestionably was derived from the State of California. The capacity to construct this road through the Territory or the present State of Nevada and into Utah certainly could not have been derived from the State of California.

Mr. SARGENT. I am not denying that there was a contract.

Mr. BAILEY. That franchise, that right, that power to extend its road and to collect tolls and transact business, could not be conferred there by the State of California; and this being a foreign corporation to the United States as to the Territories, I ask the Senator from California if the corporation did not derive its powers there from the United States.

Mr. SARGENT. The Senator simply uses the word "franchise" in a different sense from myself. I admit that a contract was made between this corporation and the Government of the United States, by which a railroad was built in the Territories under certain conditions. But the Senator from North Carolina in his argument spoke of these two corporations as creatures of Congress, and said that Congress could not divest itself of the right to strangle these, its children, at their birth or any subsequent time. I called his attention to the fact that one of them derived its powers from the State of California and that there was no right on the part of the General Government to strangle it.

Mr. MERRIMON. Mr. President, I was perfectly advertent to the fact that the Central Pacific Railroad Company was originally a corporation created by and under the laws of California; it was a State corporation, and by its corporate powers as a State corporation it had no authority to build a road across Nevada, then a Territory, or any part of the territory of the United States anywhere. The legislation of Congress supplemented the legislation of the State of California, and by virtue of the act of 1862 and the act of 1864 that corporation constructed its road in the State of California, as well as by virtue of the legislation of California, through the State of Nevada and other portions of the territory of the United States. It received large corporate powers—I know what that word means—it received large additions to its corporate powers from these two acts of Congress; it exercised them; it received large grants of public land; it received a large subsidy, as I shall have occasion to show, from the United States; and although Congress may not have power to abolish that corporation, yet there can be no question in law that Congress has control of its own legislation so far as it affects this corporation created by the State of California.

Mr. SARGENT. It has a right to take back all its gifts or executed contracts! That is the Senator's logic. Congress has power to break a contract!

Mr. MERRIMON. The grants conferred upon the Central Pacific Railroad were contained in the same acts which granted corporate powers to the Union Pacific road and a half dozen other railroad companies, exactly alike. The two acts authorized the existence of the Union Pacific Railroad Company: they likewise authorized the enlarged existence of the Central Pacific Railroad Company and a half dozen other corporations, and by the same law which conferred powers and benefits upon the Union Pacific Railroad Company and other railroad companies, benefits were conferred upon the Central Pacific Railroad Company.

Mr. SARGENT. Allow me to say a word. The legislation that the Senator refers to being put together would not change the relations of the various corporations. That legislation decided this—I think I remember it for I wrote it myself—that the Central Pacific Railroad Company of California, a corporation existing under the laws of said State, is hereby authorized to build a road—that was all—and then it went on and stated that which the Government would give it if it would build the road and that which it would require if the corporation did build the road. Now, says the Senator, because another corporation or several others were created in the same act, therefore the Government of the United States has a right to come in years after it is executed, years after the corporation has done everything that was required by the legislation except one point which is now in dispute in the courts, and say "why, here we subsidized you and we will take back our subsidy; we provided that you should pay in a certain way; we require you to pay three times as fast; we made certain conditions with you; we take them all back, and vary them, because we are powerful, because we are a sovereign and you are a subject." That is the doctrine of the Senator, and I say as between any ruler and any subject, that is the expression of tyranny.

Now the Senator will excuse me for saying further that my interest in this matter arises from the danger of an overtax of the Western States and the Pacific States by the burdens which you are endeavoring to put upon them, and furthermore the danger that by over-

charging them you may have a dilapidated railroad instead of one to carry out the original objects.

Mr. MERRIMON. Mr. President, the Senator assigns me a position which I do not occupy, and he makes an argument and attributes it to me that I have not made in substance or spirit. Taking it that the Central Pacific Railroad Company is a corporation under the laws of California and that it accepted certain benefits and rights and obligations under the legislation of Congress, if the doctrine which I am now contending for exists, there can be no question that Congress has power to control whatever right, or obligation, or benefit it did confer, and to so control it would be no impairment of a contract, would be no exercise of a power of tyranny; and why? For the very reason that by force of the Constitution of the United States, if the doctrine I am contending for is correct, it was incorporated into the contract at the time it was made, in the same measure as if the words had been written in the grant, that Congress shall have the power at all times to change, modify, repeal, or abolish the legislation whereby these rights, obligations, and benefits were conferred. But, sir, in this case—and I will refer to that view of it now—not only by force of the Constitution is it so, but by the very terms of the grant it was provided, as I shall have occasion to show in the course of my argument, that Congress should have the right to change, modify, add to, or abolish the contract afterward, if, in its judgment, it should see fit. How, then, could there be any impairment of a contract or the obligation of a contract?

Mr. SARGENT. Now, if I am not troubling the Senator too much, if the Senator's argument had gone to the extent he now states and no further, as did that of the Senator from Michigan, [Mr. CHRISTIANCY,] I should not have interrupted him by asking a question. Of course I have my own judgment as to the force of that argument. But when he went outside and claimed jurisdiction over a corporation created by the State of California, upon the ground that it was created by our legislation, I desired to call his attention to the facts.

Mr MERRIMON. I do not care to go into the question as to how far Congress has control of the corporation absolutely. It is not material to my purpose. It is only material to me to show here that Congress has control of that corporation so far as powers, rights, obligations, and duties were conferred and imposed upon it by the legislation of Congress, and I understand that the Senator does not deny that as to that extent, *pro tanto*, that Congress has the power.

Mr. SARGENT. That is in violation of the contract.

Mr. MERRIMON. It is no violation of the contract. I cannot make myself understood by the Senator, it seems. I say it is not so, because it was a part of the agreement at the time it was made—an agreement made as much as if the corporator had written it down in writing, that Congress should have this power. It entered into the contract, made a part of it, it was the very life of it, that Congress should control the exercise of the powers granted, and the corporations took them subject to this right of Congress.

Mr. SARGENT. Does the Senator refer to the provision in the acts of 1862 and 1864 as to the power to repeal, or does he refer to some unwritten law?

Mr. MERRIMON. I am now on the first branch of the subject. I am making an argument to show that this power is inherent in Congress and that Congress cannot divest itself of it. I am coming to the other view of the case afterwhile.

Mr. SARGENT. I simply say I do not agree with the Senator at all.

Mr. MERRIMON. The Senator has only anticipated me a little. I say that, if there was no reservation in these acts at all, corporations created by Congress, if they are not absolutely so, are very like public corporations, always subject to the control and power of Congress. If it were not so, Congress might in creating a corporation abdicate the powers of government and destroy the Government. It is one of those essential powers which, whenever the contract is made operates, and if Congress were to stipulate expressly in the act that a subsequent Congress should not exercise this power the stipulation would be absolutely void. It is one of the absolute powers, absolute rights of the Government, that cannot be destroyed; it exists while the Government exists, and it is always ready to be exercised; and the citizen, when he becomes a corporator under a corporation created by Congress, becomes a corporator with the stipulation as expressly made as if it were written in words, "Congress shall from time to time see to the exercise of the power, modify, change, control it, as may suit the interests and convenience of the Government." I have no doubt that power does exist and in the way I have indicated.

Mr. HILL. Will the Senator yield to me for a moment that I may ask a question?

Mr. MERRIMON. I will.

Mr. HILL. If the power is claimed for the Government over the corporate franchise I can understand it. But do you hold that a contract of loan by the Government to the companies is either a franchise in the companies or a corporate privilege granted by the Government?

Mr. MERRIMON. I say that the Government can grant a franchise for the purposes of corporations. It can grant a subsidy.

Mr. HILL. That is not the question.

Mr. MERRIMON. I see the point the Senator is making and I think I shall come to it in a moment. I do not mean to say that by virtue of the rights conferred on a corporation by the Government the Government can arbitrarily take property from the corporation. I do not mean to say that, because that would violate the spirit of the Constitution; it would violate the express letter of the Constitution in one respect. But what I mean to say is, that Congress has the power to direct the corporation in the exercise of all its rights and all its property, and it may abolish the franchise and may abolish all the powers conferred in the interest of the Government, and therefore I put in the words a moment ago "with due, reasonable regard to the rights of the corporators." It was a part of the agreement that Congress should have the power to control, direct, and regulate the exercise of the rights and powers and property of the corporation. The corporator agreed to that when he became a corporator. And if that is not true, then Congress can abdicate a sacred power of government by creating a corporation, which is plainly impossible consistently with reason. Congress cannot by any act, I do not care what device may be adopted, divest itself of the power to raise an army or to construct a post-road or a military road; it cannot divest itself of a power of government. It may employ these powers and may employ agents to execute these powers, but whoever engages as an agent or a corporation to execute these powers, engages that Congress may control his property in that behalf in order to accomplish the great purpose of the Government. But, sir, this will be made more manifest in the course of my argument. The question of the Senator from California has anticipated much of what I was going to say.

Before we go further let us get a correct notion of the motive and purposes of the acts under discussion.

Congress passed an act approved July 1, 1862, entitled as follows, to wit: "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean"—and what? The words I am about to read now are very material—"and to secure to the Government the use of the same for postal, military, and other purposes."

This title plainly indicates the purpose of Congress—a purpose of Government and in aid of the execution of a power, an essential power of the Government. It was to create a military and postal road. And not merely to authorize and construct such a road for the use of the Government, but to *secure*—that is the important word—the use of the same to the Government. The word *secure* is a material, significant, and important one; it means to give the Government the use of it; not at the will of the corporation, but at the will and pleasure of the Government, not for an occasion, for a day or a year, but perpetually; not affected by the whim or fortune of the corporation, but absolutely, and to *secure*, to establish, indefinitely, perpetually, such use of the road to the Government. How *secure* such use? Plainly by all such reasonable, apt, sufficient means as Congress may from time to time, according to circumstances, direct and provide. And this right and power and use is not in any way affected by the pecuniary rights of the Government, or the indebtedness of the corporations; when they shall pay all the debts due and to come due to the Government, the latter will still have the right, undiminished, to *secure* to itself the use of the road for all lawful Government purposes.

The wording, the phraseology, the reason, the spirit of the act and all acts amendatory of it, all alike indicate, establish the right of the Government to such use of the roads and the right to *secure* such use of them. It is provided that the Government shall have directors, who shall own no stock in the companies. The right of way and alternate sections of land are donated to the companies "for the construction of said railroad and telegraph line, * * * to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon." When forty miles of the road shall be completed, "the President shall appoint three commissioners to examine the same and report to him in relation thereto," &c. Again, it is provided "that, for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners," &c., the commissioners appointed by the President, issue bonds of the Government to the companies. It is further provided that, "on refusal or failure of the said company to pay said bonds, or any part of them," &c., the road, property, and unsold lands, &c., "may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States;" not to be sold and the Government to be reimbursed, but "for the use and benefit of the United States," the purpose being to *secure* the use of the road for the established and only for lawful purposes of the Government.

The grants of land, the "bond-subsidy," were all made on condition that the companies "shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government whenever required to do so by any department thereof," &c. The

companies are required to make reports to the Secretary of the Interior. For the purposes of the Government, the lines of railroad are to be continuous. If the companies should fail to complete these roads respectively, or to keep the same in repair, Congress may legislate to this end, "and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States," &c.

Congress passed an act amendatory of the act just commented upon, approved July 2, 1864, the title of which reads as follows:

> An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862.

The same purpose is indicated in this title as in the first one, and all the provisions of the act steadily point to the exercise of all such power by the Government as may be deemed by Congress necessary and wise to secure the perpetual use of the roads for Government purposes.

These are some of the reasons that lead me to conclude that Congress has the power, without any express reservation providing for the same, to change, modify, amend, and abolish the rights, duties, and powers of the corporations named, having due, reasonable regard for the rights of the corporators.

It is said this would impair the obligation of a contract; that it would change, make anew a contract without the consent of one of the contracting parties. I do not stop to discuss the question whether Congress has the power to expressly impair the obligation of a contract. If it has such a power, I would not invoke it, and I trust Congress will never do so. But the objection is not well founded. The exercise of the power I have been discussing does not impair the obligation of a contract or force the corporator to accept a new contract, because at the time he became a corporator, he agreed, by necessary legal implication in law, that Congress should have the power to change the rights, duties, and obligations of the corporations to the Government in respect to the purposes of the corporations, at will, having reasonable regard to the rights of the corporator, be so agreed, just in the same measure as if he had so expressly stipulated in the charter of incorporation. The spirit, the principle of the Constitution permeated the charter just as much as if the same had been expressed in terms in it and the corporator must be bound by it.

I cannot doubt the substantial correctness of the views I have expressed. But it is not necessary in the case before us to invoke the power of the Constitution, to which I have referred. Putting these corporations upon the footing of ordinary ones, Congress has power to impose the reasonable obligations on them proposed by the bill reported by the Committee on the Judiciary. Section 18 of the act of 1862 among other things provides as follows:

> And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend, or repeal this act.

Mr. MAXEY. I ask the Senator from North Carolina, supposing that Congress has the power to impair the obligation of a contract, now, is that the pivotal point of this case? Is it necessary to rest the Judiciary Committee's bill upon that ground?

Mr. MERRIMON. I have said expressly it is not. It is not material to the discussion of this question at all.

Mr. MAXEY. I wish to understand that.

Mr. MERRIMON. As I have just said, if Congress has power to impair the obligation of a contract, I, for one, would never invoke it and I trust Congress never will in any case.

Mr. MAXEY. I mention that for the reason that I propose to support the bill; but if it turned on that point I would not support it, because I do not believe that doctrine.

Mr. SARGENT. It would surprise me if it was not necessary to sustain the Judiciary bill by the declaration of a power to violate contracts and impair their obligations, so much time has been taken up by the friends of that bill in asserting that power. There certainly has been a great deal of time spent in that endeavor.

Mr. MERRIMON. I am not responsible in any sense for what other gentlemen have done; but I do not remember—and I have been paying pretty close attention to this discussion—that any one has wasted much time in discussing that view of the case. It is not material here at all. The bill proposed by the Committee on the Judiciary goes upon an entirely different ground, and rests upon an entirely different principle. But to get back, I was discussing the reservation clause in the act of 1862. Now the power reserved, treating the act as a contract between the United States and the corporators, is a material part of the contract—the corporators agree that the Congress may "add to, alter, amend, or repeal this act." These words—this provision—cannot be treated as nugatory and mere surplusage; they must be given some effect according to their intent and meaning.

What is that? It is that "Congress may add to, alter, amend, or repeal this act * * * the better to accomplish the object of this act." What is the object of this act? The great purpose, the leading object of it is to construct and establish on solid and enduring foundations in every respect, a great government military and postal road, and the power reserved may be exercised in any reasonable way looking to that end. The clause reserving power, after stating the purpose in general terms, "the object of this act," then specifies some, not all, of the things that make up the object of this act. One of these things is, "to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order." It is said the companies have done this. But this implies more than keeping it in "working order" for this month or this year; it means keeping it so indefinitely, perpetually. Are the companies in condition to do this? Can they do it? Will they do it? Are their circumstances such as they will be able to do it? Can any one say so in view of their vast indebtedness? Even some of their officers have expressed great doubt as to their ability to pay their debts, as I will show presently. Then is it not plain that Congress may, ought to, exercise the power to "add to, alter, amend, or repeal this act," to compel these companies to provide prudently for the payment of these vast debts which constitute liens on their roads and all the property connected with them, to the end they may in all the future, be reasonably in condition to keep the roads in "working order?" Especially, when the companies have taken no steps to prepare to pay their debts!

Another of the things specified in the reservation of power to Congress and which goes to make up "the object of this act" is, "to secure to the Government at all times, (but particularly in time of war,) the use and benefits of the same for postal, military, and other

purposes." The companies say they have done this. But do they say so truly? Granted that they have not made default. This is not all that is plainly implied and required. The companies must keep themselves in reasonable condition to *secure* to the Government for the future, indefinitely, the use of the roads and telegraph lines. The Government cannot reasonably allow these companies to let a burden of debt accumulate upon them which they cannot easily manage, so that after awhile the mortgages must be foreclosed and the roads embarrassed and allowed to go to ruin and decay in the hands of themselves by reason of their insolvency, or in the hands of irresponsible purchasers. We know it is not denied that the companies owe vast, embarrassing debts which they cannot pay at maturity unless they begin now to make reasonable preparations to do so. Then, it is plainly the duty of Congress to this end, for this manifest purpose, to exercise the power reserved to "add to, alter, amend, or repeal this act."

But there is another thing that goes to make up "the object of this act," that is, to provide for the payment to the Government of a sum of money equal to the principal and interest of the bonds of the Government issued to the companies, when they shall mature and be paid by the Government. It is expressly provided that such sum of money shall be paid to the Government and it has a second mortgage to secure such payment. The general terms, "the object of this act," embraces this by all rules of construction; and to secure the payment of that debt Congress may in a reasonable way "add to, alter, amend, or repeal this act."

The words in the clause reserving power to Congress, "having due regard for the rights of said companies named herein," imply that Congress shall not take the property of the companies for nothing or deprive them of their rights, but Congress may direct and control them in the use and exercise of the same, because the corporators agreed that Congress might do so. The words "add to, alter, amend, or repeal this act" must mean something; they must have some effect. What other can they have than that I have assigned them? I cannot see.

The act of 1864 is by its terms amendatory of the act of 1862, and the two must be construed together as one act. This is the plain legal effect, and the Supreme Court so decided in Kansas Pacific Company *vs.* Prescott, 16 Wall., 603. It is provided by the twenty-second section of the act of 1864 "that Congress may at any time alter, amend, or repeal this act." This reservation of power is as broad as language can make it. The two acts being in effect one and construed together, this reservation of power must apply to both acts—this is the legal effect and the manifest intention of Congress. Can any one suppose that it was intended to reserve power to repeal the act of 1864 alone? To repeal the act of 1864 would leave the act of 1862 in many respects inoperative. Then this clause applies to both acts, reserves to Congress the fullest power to "at any time alter, amend, or repeal this [both] act." It is not proposed to take from the companies any property or money; it is only proposed to direct and control them in the exercise of their rights. This they have agreed that Congress may do, and there cannot therefore be any impairment of right.

It seems to me that these views are reasonable and just, that I have stated the law as it arises upon the two acts under discussion. I beg now to cite some authorities in support of the views I have submitted, and especially to show to what extent the power reserved to the Legislature in the charters of corporations may be exercised.

I cite first, Pierce on the Law of Railways. At page 36 he says:

The power to amend, alter, or repeal the charter may be reserved by the Legislature by a provision to that effect inserted therein, or in a general law declared applicable to all acts of incorporation afterward passed; and the right of the Legislature to alter or repeal the charter is thus made a part of the contract. The charter of the company is, by such a reservation, subject to any reasonable amendment or alteration which the Legislature may make, and any reasonable additional obligations may be imposed on the company. Thus, it may be required by virtue of such reservation to abandon the use of steam-power in propelling its cars through cities, or to raise or lower highways where its track crosses them when directed by the municipal authorities. The Legislature under this power may increase the liability of the stockholders, who will not thereby be exonerated from liability on their subscriptions for stock. The subscriber has been held not to be released, where the Legislature, in pursuance of such a reservation, granted to the company the power to change its route. There being a general statute of Missouri reserving the power to alter or amend acts of incorporation, an act of its Legislature making companies previously incorporated liable to laborers employed by contractors for the work done by them on their roads has been held constitutional.

That is the general law as laid down by an elementary writer in this country on this subject. In the case of The Northern Railroad Company *vs.* Miller, 10 Barbour, 282, the court say:

It was competent for the State, having the power to grant or to withhold the charter, to annex such condition to the grant, or to make such reservation as it pleased. The directors, trustees, or other managing agents, by whatever name they are called, by accepting the charter became bound by this condition or reservation; and every individual who subscribes to the stock of the company thereby makes himself a party to the contract, subject to to the conditions and reservations of the charter. In effect he stipulates, at the time he subscribes, that the Legislature may alter or repeal the law, and thus change the obligation of his subscription or defeat it altogether. It cannot therefore with truth be said that the amendatory act, which is complained of in this case, was an alteration of the defendant's contract *without his assent*. It was merely such alteration as he himself, by becoming a party to the contract, had agreed that the Legislature might make. He is as much bound by it as if he had signed a petition to the Legislature requesting the passage of the act in question. Whatever modification is thus effected in the obligation created by his subscription is made by his own agreement, entered into at the moment he became a party to the contract, and is as binding upon him as if it had been accomplished by his own solicitation and procurement. It surely cannot be necessary to cite authorities to prove that what a man authorizes another to do is as obligatory upon him, when done, as if it had been performed by himself.

In Tomlinson *vs.* Jessup, 15 Wallace, 454, the court say:

The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligations.

In Miller *vs.* The State, 15 Wallace, 498, the court state in broad and strong terms the extent of the power. They say:

The reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors, and for the proper disposition of the assets.

That is the language of our own Supreme Court, and it is as broad and comprehensive and efficient as language can make it. But cases might be cited indefinitely, all going the full length of the proposed exercise of power as now proposed.

It has been said that the Supreme Court, in the case of the United States *vs.* Union Pacific Railroad Company, (1 Otto, 72,) have held that Congress could not exercise the power reserved as now proposed. This is a grave misapprehension of the ruling of the court. The court said plainly that Congress in the respect then under consideration had not undertaken to exercise the power, but suggest strongly by

implication that it might do it. I read a material extract from the opinion of the court. I shall now read what the court say bearing upon this subject, and I read it because it has been cited over and over again, as conclusive to the point that Congress cannot exercise this power. The court decided to the contrary, as I think; they suggest by implication very strongly that Congress can do it; and this paragraph is material to show that I am correct. The court say:

> Another act was subsequently passed by virtue of which this suit was instituted by the appellee. [Act of March 3, 1873, 17 Statutes, page 508, section 2.] It is contended that this act repeals that portion of the charter of the company which contains the provisions we have discussed. But manifestly its purpose was very different. Although it directs the Secretary of the Treasury to withhold all payments to the companies on account of freights and transportation, it at the same time authorizes any company thus affected to bring suit in the Court of Claims for "such freight and transportation;" and in such suit "the right of such company to recover the same upon the law and the facts shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them." This means nothing more or less than the remission to the judicial tribunals of the question whether this company and others similarly situated have the right to recover from the Government one-half of what they earned by transportation; and this question is to be determined upon its merits.
>
> The merits of such a question are determined when the effect of the charter is ascertained and declared. It is hardly necessary to say that it would have been idle to authorize a suit, had Congress intended to repeal the provision on which alone it could be maintained.

Is it not plain to the simplest mind that what the court said was, that Congress had not in that case undertaken to exercise the power, and that they suggest strongly by implication that Congress may exercise it? So it appears conclusively that Congress has lawful power to pass the bill proposed by the Committee on the Judiciary, and one more stringent if deemed necessary.

Then ought Congress to exercise this power and in the way proposed? If we consider the relations of these corporations to the Government, their history, their vast debts, their circumstances, their earnings, and the disposition of them, their practices and manifest, studied purpose not to make any reasonable provision for paying the debt due the Government, it seems to me that there can be only an affirmative answer to the question just propounded.

I propose now to bring to the attention of the Senate some considerations that, in my judgment, point strongly to the necessity for prompt and vigorous action on the part of Congress toward these corporations. By virtue of the acts of Congress just referred to the Union Pacific Railroad Company was authorized to construct and maintain a railroad and telegraph line from a point on the one hundredth meridian of longitude west from Greenwich in the Territory (now State) of Nebraska to the western boundary of the Territory (now State) of Nevada. This line of road is 1,085.88 miles in length.

By virtue of the same acts the Central Pacific Railroad Company—a corporation created and existing under the laws of the State of California—was authorized to construct a road and telegraph line from San Francisco to the eastern boundary of California, there to connect with the railroad and telegraph line of the Union Pacific Railroad Company, the two to make one continuous line of road, which continuous line is 1,776.18 miles in length.

In aid of the purposes provided for in said acts other companies of less magnitude and importance were authorized by them, to wit: the Kansas Pacific, the Central Branch Union Pacific, the Western Pacific, and the Sioux City and Pacific.

The Government granted the right of way through the public lands "to said company [naming the Union Pacific Railroad Company and

the others as well] for the construction of said railroad and telegraph line;" "the right, power, and authority" was given "said company to take from the public lands adjacent to the line of said road earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops and depots, machine-shops, switches, side-tracks turn-tables, and water-stations."

The Government likewise granted, gave, donated "for the purpose of aiding in the construction of said railroad and telegraph line, and to *secure* the safe and speedy transportation of the mails, troops, munitions of war and public stores thereon, every alternate section of public lands, designated by odd numbers, to the amount of five [increased to ten] alternate sections per mile on each side of said railroad, on the line thereof and within the limits of ten miles on each side of said road," &c. All *mineral lands* were excepted, except that timber on the same and coal and iron in them were granted and not excepted. This grant of lands to the several companies mentioned embraced about thirty millions of acres. In a letter dated March 8, 1876, the Commissioner of the General Land Office says:

1. The amount of land to which each company is supposed to be entitled under acts of July 1, 1862, and July 2, 1864, is as follows:

| | *Acres.* |
|---|---|
| Union Pacific | 12,000,000 |
| Central Pacific, including late Western Pacific, now consolidated | 9,100,000 |
| Kansas Pacific | 6,000,000 |
| Denver Pacific | 1,100,000 |
| Central Branch Union Pacific | 245,166 |
| Burlington and Missouri River, in Nebraska | 2,441,600 |
| Sioux City and Pacific | 45,000 |

These figures are from approximate estimates merely, the adjustment of the grants not having been so nearly completed as to justify an attempt to state accurately the amount of lands inuring to each.

By virtue of the acts mentioned "for the purposes" in them mentioned and specified, bonds of the United State were issued to the railroad companies named respectively as follows, to wit:

| Name of railway. | Authorizing acts. | Rate of interest. | When payable. | Interest payable. | Principal outstanding. |
|---|---|---|---|---|---|
| Central Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | $25, 885, 120, 00 |
| Kansas Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 6, 303, 000 00 |
| Union Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 27, 236, 512 00 |
| Central Branch, Union Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 1, 600, 000 00 |
| Western Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 1, 970, 560 00 |
| Sioux City and Pacific | July 1, 1862, and July 2, 1864. | 6 per cent. | 30 years from date. | January and July. | 1, 628, 320 00 |
| Total | | | | | 64, 623, 512 00 |

The aggregate of the bonds so issued as appears, is $64,623,512. These bonds were not a gift to the companies; it is expressly provided in the act that, "to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States," that the United States should have a first mortgage on all the property of all kinds of the companies. This mortgage was afterward by the act of 1864 changed to a second mortgage.

It was provided that—

All compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least 5 per cent. of the net earnings of said road shall also be annually applied to the payment thereof.

This provision was modified by the act of 1864, as follows:

And that only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads.

By the act of 1864 the companies named are authorized respectively to "issue their first-mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively."

The first-mortgage-bond debt created by the companies in pursuance of the last-mentioned provision of the act of 1864, is about the same in amount as the amount of the Government bonds issued, and they are a *first lien* on all the property of the companies.

Under a decision of the Supreme Court United States *vs.* Union Pacific Railroad Company, 1 Otto, 72, these several companies are not bound to pay the interest which the Government has paid and may pay, until the bonds issued by the Government to the companies shall mature. These bonds will mature about the year 1900.

At the expense of being a little tedious, I deem it important now to read some interesting extracts from a report made to the House of Representatives April 25, 1876, by the Judiciary Committee on the subject of a *sinking fund* for the railroad companies, to which I have made reference. The committee say:

The railroad companies now claim that they are not bound or liable to pay any of the interest advanced or to be advanced by the Government until the maturity of the "subsidy bonds," thirty years from their date, except as the application of (1) one-half of the charges for transportation and other services may be so applied, with also (2) the application of 5 per cent. annual net earnings of the roads. But these will fall far short of paying the interest.

There is no law which in such cases gives to the United States interest on advances made in paying the interest on the "subsidy bonds," nor, indeed, on any liability of any company to the Government. The effect, therefore, will be, if the claim of the railroad companies prevails, and even if they should at the maturity of the subsidy bonds, about twenty years from this time, then repay any balance of advances, the Government would be without compensation for the use of the money advanced and not so reimbursed. This loss to the Government would in value and amount reach many millions. The Government pays currency interest at 6 per cent. per annum, payable half yearly. Assuming this rate which the Government actually pays as the value, the actual cost to the Treasury of the advances made and to be made, compounding the interest thereon to the maturity of the "subsidy bonds," would be $316,112,571.79, as follows:

Here is an interesting table. This report seems to have been gotten up with great consideration, and I take it it is very accurate. It

is a report on the subject of a sinking fund for the several Pacific Railroad Companies made to the House of Representatives during the Forty-fourth Congress by Mr. Lawrence, of Ohio, and it is report No. 440, Forty-fourth Congress, first session. I present the following table which I find in it:

*Statement of the amount of bonds issued to the Pacific Railroad Companies, with interest computed thereon half-yearly at 6 per cent. per annum.*

The interest in this statement is compounded.

| | | |
|---|---|---|
| Union Pacific Railroad Company: | | |
| Amount of bonds issued | $27,236,512 00 | |
| Interest due at maturity, September 3, 1897 | 133,230,206 60 | |
| | | $160,466,718 60 |
| Central Pacific Railroad Company: | | |
| Amount of bonds issued | 25,885,120 00 | |
| Interest due at maturity, November 18, 1897 | 126,619,733 30 | |
| | | 152,504,853 30 |
| Kansas Pacific Railroad Company: | | |
| Amount of bonds issued | 6,303,000 00 | |
| Interest due at maturity, November 17, 1896 | 30,831,774 36 | |
| | | 37,134,774 36 |
| Western Pacific Railroad Company: | | |
| Amount of bonds issued | 1,970,560 00 | |
| Interest due at maturity, September 5, 1898 | 9,639,197 41 | |
| | | 11,609,757 41 |
| Sioux City and Pacific Railroad Company: | | |
| Amount of bonds issued | 1,628,320 00 | |
| Interest due at maturity, January 1, 1898 | 7,965,095 16 | |
| | | 9,593,415 16 |
| Central Branch Union Pacific Railroad Company: | | |
| Amount of bonds issued | 1,600,000 00 | |
| Interest due at maturity, October 20, 1896 | 7,826,564 96 | |
| | | 9,426,564 96 |
| Total principal | | $64,623,512 00 |
| Total interest | | 316,112,571 79 |
| Grand total | | 380,736,083 79 |

The principal of the "subsidy bonds" is, as already stated, $64,623,512, with an annual interest of $3,877,410.72, which, for the thirty years the bonds are to run from their date, will aggregate $116,322,321.16.

If no part of the interest should be reimbursed by the companies to the Government until the maturity of the subsidy bonds, the actual loss to the public Treasury would be $199,790,250.63, being the difference between the face of the advances, $116,322,321.16, and their amount, with interest thereon compounded, $316,112,571.79.

Let it be remembered that the Government is not only not to be reimbursed until its bonds issued to the companies mature, but not then, until the first-mortgage bonds of the companies are discharged, because they are a *first lien*. There is no provision made by the companies to pay the vast debt of the Government against them when it shall mature. They have not created any sinking fund or set apart any fund or means whatever with which to do so. They manifest no purpose to do so; and, judging the future by the past, they never will voluntarily make any such provision. In 1865, the president of the Union Pacific Railroad Company broadly intimated that the Government might lose its debt. It now looks as if their purpose was to continue to make large dividends until the Government debt shall mature, and then let their first-mortgage creditors take the roads, or leave the Government to pay the first-mortgage debt and take the roads, the stockholders in the mean time having realized enormous profits in the shape of dividends on stock that cost most of them almost a nominal sum, as will appear presently.

The following extract from the report read from a moment ago

will give some notion of what may be expected from the companies if Congress shall not take action. I read from page 19 of the report:

It has already been shown that the Government has been reimbursed from earnings only $5,455,169.53 in a period of nine years, and that the same source will probably not average over half a million of dollars a year.

From what has been said it will be seen that, according to the claim of the companies, the Government cannot expect to realize more than about $800,000 per annum from the 5 per cent. of net earnings.

The total of these two sources, then, on this basis, would be about $1,300,000 per year. But it is not probable the services will continue so large as heretofore.

The total sum realized by the Government to the maturity of the "subsidy bonds," including the amount heretofore received, would reach probably about $36,000,000.

| | |
|---|---|
| The principal of the subsidy bonds is | $64,623,512 |
| Interest to maturity without compounding or counting any interest on advances of interest | 116,322,321 |
| Total claim of Government | 180,945,833 |
| The amount provided to meet this, as above stated | 36,000,000 |
| Deficiency | 144,945,833 |

And as the law now stands, the Government, unable to collect interest on its dues, and the companies steadily refusing to pay what they concede to be legally and justly payable, with a probability that they will continue to pursue the same course, the real deficiency to meet the acknowledged indebtedness, with interest thereon, would be many millions more, but the exact amount of course cannot be accurately stated.

And if the companies are permitted to go on refusing, as they do, to pay their acknowledged indebtedness, all this will increase the loss to the Government.

There is an imperative necessity for prompt and decisive action to secure the just demands of the Government and to save it from loss.

The president of the Union Pacific Company, in a letter to the Secretary of the Treasury dated February 9, 1875, says:

"The mortgage held by the Government, in its terms and by judicial decision of the United States circuit court, cannot be enforced until the maturity of the bonds, which is near the close of the present century.

"The bonds are accumulating an interest account, also uncollectible until the principal is due. The principal and interest when due will amount to the very large aggregate of over seventy-seven millions of dollars, though the actual amount advanced by the Government was only $27,236,512.

"For this very large amount the Government has only a second mortgage, and if it be allowed to accumulate, without any provision being made to meet it, the company will probably be utterly unable to pay it.

"At the same time, it is equally manifest that the Government will be unable to collect it, except upon the assumption that it will advance the money to discharge prior mortgages, and run the road on Government account—a policy which wise statesmanship could not advise.

"By standing still, therefore, the company has a load of debt accumulating for which no provision is made, and the Government is drifting further and further from the opportunity to secure a just return for its advances. To do nothing is to injure both the Government and the company, perhaps irretrievably to both."

The committee in their report say further:

This statement is fully justified by the existing indebtedness of the company. The bonded indebtedness of the Union Pacific Company is $79,457,912, of which there is owing to the United States for "subsidy bonds" $27,236,512. Of the residue, $52,221,400, about $27,236,512 are first-mortgage bonds, and the residue are income, sinking-fund, and land-grant bonds, the latter secured by mortgage on the land grant of the company. It is quite apparent that the road is in a condition in which it never can and never will pay its liabilities to the United States if they are permitted to accumulate until the maturity of the "subsidy bonds." This is the fact, whatever may be its cause.

I read again from page 21:

The lands will doubtless be sold out under the land-grant mortgage. If the stockholders should lose their stock and all bonds be paid but the first-mortgage bonds, this company would, at the maturity of the subsidy bonds, owe as follows:

| | |
|---|---|
| First-mortgage bonds | $27,236,512 |
| Subsidy bonds due the Government | 27,236,512 |

| | |
|---|---|
| Interest on subsidy bonds | 32,683,814 |
| Total | 87,156,838 |

This is equal to $80,254 per mile. To pay this, the Government may find only a worn-out road, which, put up at auction, would not pay the first-mortgage bonds. And if these should happen to be in the hands of those who now control the road, they would doubtless become the purchasers and sole owners, for the objection to a Government purchase would be so great it would never be made, and there could be no other competitor who would be formidable as a purchaser. If there could be danger of this, the managers of the road could permit the interest to accumulate on the first-mortgage bonds to any amount requisite to secure their purpose to become owners of the road without paying any of its debt to the Government. The necessity for prompt measures to secure the Government cannot be doubted.

I read again from page 29 of the report:

That it is the duty of the companies to provide a sinking fund to meet the payment of the subsidy bonds at maturity, and that there is an urgent necessity for it must be manifest.

The president of the Union Pacific Company, in a letter to the Secretary of the Treasury dated February 9, 1875, says:

"The mortgage held by the Government, in its terms and by judicial decision of the United States circuit court, cannot be enforced until the maturity of the bonds, which is near the close of the present century.

"The bonds are accumulating an interest-account, also uncollectible until the principal is due. The principal and interest when due will amount to the very large aggregate of over $77,000,000, though the actual amount advanced by the Government was only $27,236,512.

"For this very large amount the Government has only a second mortgage, and if it be allowed to accumulate without any provision being made to meet it, the company will probably be utterly unable to pay it.

"At the same time it is equally manifest that the Government will be unable to collect it, except upon the assumption that it will advance the money to discharge the prior mortgages and run the road on Government account; a policy which wise statesmanship could not advise.

"By standing still, therefore, the company has a load of debt accumulating for which no provision is made, and the Government is drifting further and further from the opportunity to secure a just return for its advances. To do nothing is to injure both the Government and the company, perhaps irretrievably to both."

The committee proceed and say:

The duty to provide the means of paying these bonds is an obligation prior to any claim of stockholders for dividends, yet the two principal companies are making large dividends and providing no sinking fund.

I now wish to direct attention to what was done with the vast sums of money which these companies got possession of under the legislation to which reference has been made.

The law required that the capital stock of the several companies should be paid for in money at par. In fact, it was paid for at not exceeding thirty cents in the dollar in work on the road. It is said that no cash was paid for the stock of the Union Pacific Railroad Company capital stock, except about $400,000, and it seems it is not certain that sum was paid.

I read from the report of the House Judiciary Committee, at page 18:

Union Pacific Railroad Company.—Stock subscribed, $36,783,000; paid in, $36,762,300. The bonded indebtedness, $79,457,912, of which $27,236,512 is due to the United States.

Central Pacific Railroad Company.—Stock subscribed, $62,608,600; paid in, $54,275,500. Indebtedness, $86,168,688.11, of which $27,855,680 is due to the United States. This company now comprises, by consolidation, the Western Pacific, the California and Oregon, the San Francisco, Oakland and Alameda, and the San Joaquin Valley Companies, in addition to the original Central Pacific Company.

Central Branch, Union Pacific Company.—Stock subscribed, $1,000,000; paid in, $969,600. Indebtedness, besides $1,600,000 to the United States, is $303,902.63.

Kansas Pacific Company.—Stock subscribed, $9,992,500; paid in, $9,689,950. Total indebtedness, $30,965,975.41, of which $6,303,000 is due the United States.

Sioux City and Pacific Company.—Stock subscribed, $4,478,500; paid in, $1,791,400. Bonded indebtedness, $3,256,320, of which $1,628,320 is due the United States. The floating debt is $60,571.67.

The stock was not in fact paid for as reported. I read from the same report, at page 20, a striking statement, which must strike with great force the mind of every one who wants to do his duty upon this measure:

In a report made to the House on the 20th February, 1873, (House Report No. 78,) by a committee thereof, it was said of the Union Pacific Company:

"That the moneys borrowed by the corporation, under a power given them only to meet the necessities of the construction and endowment of the road, have been distributed in dividends among the corporators; that the stock was issued not to men who paid for it at par in money, but who paid for it at not more than thirty cents on the dollar in road-making; that of the Government directors, some of them have neglected their duties, and others have been interested in the transactions by which the provisions of the organic law have been evaded; that at least one of the commissioners appointed by the President has been directly bribed to betray his trust by the gift of $25,000; that the chief engineer of the road was largely interested in the contracts for its construction; and that there has been an attempt to prevent the exercise of the reserved power in Congress by inducing influential members of Congress to become interested in the profits of the transaction. So that of the safeguards above enumerated none seems to be left but the sense of public duty of the corporators."

The report shows that in fact the men engaged in this enterprise never risked a dollar of their own capital by the possibility of loss, and that they not only constructed the road from the resources which came from the Government, but that they made enormous profits from these, thereby leaving the United States with no adequate security for the reimbursement of the subsidy bonds.

I read further from the same report, beginning at page 14:

From this it will be seen these companies, on their own showing, are making large profits, and are abundantly able to pay and indemnify the Government against future loss, and pay liberal dividends besides on the par value of stock which, as has been shown by a committee of the House as to the Union Pacific Company, cost its original holders "not more than thirty cents on the dollar in road-making, which road-making itself paid enormous profits—profits realized through the notorious Credit Mobilier of America. These net earnings, as reported by the companies, are over 16 per cent. on the nominal capital stock of the Union Pacific Company, or, in fact, about 50 per cent. for the year 1875 on the real cost of the stock; while as to the Central Pacific Company, the net earnings are nearly 15 per cent. on the nominal capital stock, and how much on the real cost of the stock is not disclosed.

I wish now to read a striking extract or two from a report made to the House of Representatives by a select committee on the 20th of February, 1873. This is a report made by Mr. Wilson. It is report No. 78, Forty-second Congress, third session. The committee say:

The Government never consented to trust its property to men who had not put their own money into the enterprise. It never consented to take security for its reimbursement at the end of thirty years, solely on the property it had advanced. It never expected to rely for the performance of these great public duties upon a company whose debts equaled its whole property. The law-making power, if its mandates are to be obeyed or respected hereafter, cannot accept as an excuse for disobedience to its express directions, by the corporation it has created, that the members of that corporation have decided that those directions were unreasonable and unnecessary.

And this is the important point in the extract I am now reading:

In this case the provision of the charter requiring the stock to be paid for in money has been grossly violated; because, as is apparent, nearly the whole of the stock that has been issued represents no value to the railroad company; or, to state it differently, was issued without any consideration whatsoever.

I read further from page 21 of the same report:

The result of these proceedings was this:

1. While the charter of the Credit Mobilier required its affairs to be managed by a board of directors and its principal business office to be in Philadelphia, the actual conduct of its affairs was wholly by the men acting as a board of trustees and in the city of New York, so that this unlawful arrangement attempted to disguise, and did in effect disguise, these persons by means of a fictitious and pretended and not a real use of the corporate powers of the Credit Mobilier.

2. While the charter of the Union Pacific Railroad Company required its corporate powers to be wielded by a board of fifteen directors, ten of whom should be *bona fide* holders of stock and should be elected by stockholders representing cap-

[illegible]

[illegible]

[illegible]

should designate,) and to contribute $1,600,000 for the purpose of carrying the contract out.

This Hoxie contract and its assignment were a device by which the persons who were the active managers and controllers of the Union Pacific Railroad Company caused said corporation to make a contract with themselves for the construction of a portion of its road, by which also they got possession of all the resources which it would be entitled to by the completion of said portion, and by which they evaded, or sought to evade, the requirement that the capital stock should be fully paid in in money, by substituting for such payment a fictitious or nominal payment in road building and equipment, each share being treated as being worth much less than its par value. That this was the substance of the transaction will more fully appear when we come to speak of a subsequent arrangement of the same nature, but on a larger scale.

* * * * * * *

On the 26th day of March, 1864, by an act of the Legislature of the State of Pennsylvania, the name was changed to "The Credit Mobilier of America."

By the terms of purchase of the charter, an agency was to be established in the city of New York, and when the subscription was made it was upon the condition that the full powers of the board of directors should be delegated to the New York agency, and that a railway bureau should be established at said agency, of five managers, three to be directors of the company, (afterward changed to seven managers,) who should have the management of railway contracts, subject to the approval of the president. By these means this Pennsylvania corporation, so far as the management of its affairs was concerned, substantially expatriated itself, and, clothed with the extraordinary powers acquired from the State of Pennsylvania, it proceeded to take upon itself the control of the Union Pacific Railroad Company in the manner following:

It purchased the outstanding stock of that corporation, amounting to about $2,180,000, on which about $218,000 had been paid to the railroad company, the Credit Mobilier paying for this stock the amount already paid. At the time of this purchase the shares of Union Pacific stock were $1,000 each. After the act of 1864 was passed these shares were canceled, and a reissue was made in shares of $100 each. The reissue was made to the stockholders of the Credit Mobilier, and by this process the stockholders of the two corporations were made identical. By this means the persons who under the guise of a corporation that was to take the contract to build the road held complete control of the corporation for which the road was to be built.

These things accomplished, they took charge of construction under the Hoxie contract, and the portion of the road lying between Omaha and the one hundredth meridian was constructed under it.

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|---|---|
| This contract cost the Union Pacific Railroad Company | $12,974,416 24 |
| It cost the Credit Mobilier | 7,806,183 33 |
| Profit | 5,168,233 91 |

This profit is a profit in stock and bonds estimated at par. Their actual value will appear hereafter.

The next event in this history is as follows, and it is stated here to show the animus of those who were managing this great trust:

The Hoxie contract had been completed, finishing the road to the one hundredth meridian, a distance of two hundred and forty-six and forty-five hundredths miles. An agreement was then made, (November 10, 1866,) by Thomas C. Durant, vice-president of the Union Pacific Railroad Company, with a Mr. Boomer for the construction of one hundred and fifty-three and thirty-five hundredths miles west from the one hundredth meridian. By the terms of this agreement Boomer was to be paid $19,500 per mile for that portion between the one hundredth meridian and the east bank of the North Platte, and for that portion lying west of the North Platte within the limits of the agreement $20,000 per mile, the bridge over the North Platte, and station-buildings equipment, &c., to be an additional charge.

This contract was never ratified by the company, but under it the work progressed, and fifty-eight miles of road had been completed and accepted by the Government. The books of the company fail to show what this fifty-eight miles had cost the company; but from the best evidence that could be procured your committee believe that the cost had not been to exceed $27,500 per mile for construction and equipment, the excess over the contract price being for station-houses, equipment, &c. Inasmuch as the charter required that the station-houses, equipment, &c., should be built and furnished before acceptance by the Government, and inasmuch as the records of the Department show that the fifty-eight miles had been accepted, your committee feel warranted in finding that this had been done and that the cost of the whole was not to exceed $27,500 per mile. But notwithstanding this, on the 5th day of January, 1867, the board of directors by a

resolution extended the Hoxie contract over this fifty-eight miles of then completed road, thereby proposing to pay to the Credit Mobilier the sum of $22,500 per mile for this fifty-eight miles, amounting to the sum of $1,345,000, without any consideration whatever.

The following is the resolution of date January 5, 1867:

"*Resolved*, That the Union Pacific Railroad Company will, and do hereby, consider the Hoxie contract extended to the point already completed, namely, three hundred and five miles west from Omaha, and that the officers of this company are hereby authorized to settle with the Credit Mobilier at $50,000 per mile for the additional fifty-eight miles."

That it was proposed to give the Credit Mobilier this profit, if that is the proper word to be used in such a connection, is verified by the fact that subsequently the sum of $1,104,000 was paid to the Credit Mobilier on account of this fifty-eight miles, for the construction of which it never had even the semblance of a contract. Of this $1,104,000 further mention will be made hereafter.

I read further from page 13, of same report, to show the like spirit of the "Oakes Ames contract:"

This contract extended over one hundred and thirty-eight miles of road completed and accepted. No work was done under it until after its assignment. That portion already completed had cost not to exceed $27,500 per mile, and by embracing this one hundred and thirty-eight miles in it these trustees derived a "profit," if such a term is admissible in such a connection, which enabled them to make a dividend among the stockholders in less than sixty days after the assignment, namely, on the 12th of December, 1867, as follows: 60 per cent. in first-mortgage bonds of the Union Pacific Railroad Company, $2,244,000; 60 per cent. in stock of the Union Pacific Railroad Company, $2,244,000.

This was mainly, if not entirely, derived from the excess of the contract price over what the one hundred and thirty-eight miles had cost.

The trustees proceeded to construct the road under this contract, and from a balance-sheet taken from the books it appears that the cost to the

| | |
|---|---|
| Railroad company was | $57,140,102 74 |
| And the cost to the contractors was | 27,285,141 99 |
| Profit | 29,854,141 99 |

The nature of this profit, as in case of that on the Hoxie contract, will appear hereafter.

Again I read a further extract from pages 13 and 14 in further illustration of the spirit of the corporators:

DAVIS CONTRACT.

This was a contract made with J. W. Davis, a man of but little, if any, pecuniary ability, (and not expected to perform the contract,) for the construction of that part of the road beginning at the western terminus of the "Ames contract," and extending to the western terminus of the road, a distance of one hundred and twenty-five and twenty-three hundredths miles. It was upon the same terms as the Ames contract, and was assigned to the same board of trustees. Under it the residue of the road was constructed, and, from a balance-sheet taken from the books of the railroad company, it appears that it—

| | |
|---|---|
| Cost the railroad company | $23,431,768 10 |
| And, from a balance-sheet taken from the books of the trustees, that it cost the contractors | 15,629,933 62 |
| Profit | 7,802,084 48 |

Your committee present the following summary of cost of this road to the railroad company and to the contractors, as appears by the books:

*Cost to railroad company.*

| | |
|---|---|
| Hoxie contract | $12,974,416 24 |
| Ames contract | 57,140,102 94 |
| Davis contract | 23,431,768 10 |
| Total | 93,546,287 28 |

Now see the other side of the books:

*Cost to contractors.*

| | |
|---|---|
| Hoxie contract | $7,[illegible]06,183 33 |

| | |
|---|---|
| Ames contract | 27,235,141 99 |
| Davis contract | 15,629,633 62 |
| | 50,720,958 94 |
| | 42,825,328 34 |
| To this should be added amount paid Credit Mobilier on account of fifty-eight miles | 1,104,000 00 |
| Total profit on construction | 43,925,328 34 |

I might spend the day in reading extracts from these reports, all going to show the enormity of the frauds practiced upon the Government. Surely what I have read will serve to show that Congress ought to hasten to do now what ought to have been done long since—to protect the Government against a corporation that has thus robbed it.

The testimony against the Central Pacific Railroad Company is not so complete, but the practices of that company have been far from what was just and fair toward the Government. I read an extract from a speech made by Hon. William A. Piper, of California, in the House of Representatives, April 8, 1876. Among other things he says:

> The Central Pacific Railroad of California in 1870 became consolidated with the Western Pacific, the San Joaquin Valley, and the San Francisco, Oakland and Alameda Railroad Companies, under the name of the Central Pacific Railroad.
>
> With a desire to own every pass and natural avenue to the Pacific, the directors, by well-known means, also secured control of the Southern Pacific Railroad Company, a corporation formed October 11, 1870, by the consolidation of the San Francisco and San José, the Southern Pacific of California, the Santa Clara and Pajaró Valley, and the California Railroad Companies. The Southern Pacific Railroad of California should not be confounded with the Southern Pacific Railroad of Texas.

The schemes of these men to secure immense profits in the construction of roads to the Pacific were similar to those of the Credit Mobilier of America.

He then refers to a suit in California relating to the Central Pacific, and says:

> Under these circumstances, the account given by Samuel Brannan, the plaintiff in this suit, may be considered as substantially true. He asserts that C. P. Huntington, Leland Stanford, Mark Hopkins, Charles Crocker, E. B. Crocker, and others, being a majority of the directors of the Central Pacific, formed themselves into a company styled the Contract and Finance Company, for the purpose of taking contracts for the construction of the road at rates largely in excess of the sum at which the work could have been let out to responsible parties. The said directors then entered into a contract with themselves, as member of this fictitious corporation, for the construction of the Central Pacific, and transferred to the Contract and Finance Company the entire subsidies of land, money, and bonds granted by the United States, the States of California and Nevada, and various municipal corporations of California in aid of the enterprise. They also granted to Wells, Fargo & Co. the exclusive right of running express trains for the transportation of freight, packages, and bullion over the Central Pacific, and received as pay for the concession stock in that company. They also bought up the stock of competing railroads, and, receiving the subsidy bonds from the United States, appropriated to themselves the profits of said roads. They so managed their operations, principally through the Contract and Finance Company, as to earn immense profits, recklessly increasing the cost of building the Central Pacific to double or treble the amount necessary.
>
> In order to obtain these immense grants of land and money, and to procure the reorganization of the competing railroads purchased by them, and to secure their re-election as officers thereof, they expended vast sums of money in lobbying; and in carrying out their schemes generally they rode rough-shod over the people of the Pacific coast, using every conceivable mode of oppression. These grave charges are substantially confirmed by the reluctant testimony of Richard Franchot and C. P. Huntington, given in the early part of 1873 before the special committee of this House appointed to investigate the operations of the Central Pacific.

These companies now have the ability to make reasonable provision to pay the debt of the Government. Their earnings are immense. They make larger dividends than any railroad companies in this country. If the bill before the Senate should become a law, they can, as appears by the report of the committee, pay to the stockholders from 4½ to 6 per cent. dividends on the nominal value of the capital stock. And when we consider the market value of the stock, and then further what it really cost most of the stockholders, such dividends would be enormous.

The bill of the Committee on the Judiciary is compulsory in its provisions. This we have seen is absolutely essential. It makes adequate—not more—provision for paying the debt of the Government, principal and interest, when it shall mature, leaving the stockholders reasonable, under the circumstances extravagant dividends. And in case the earnings of the company shall not in any year be adequate for the purposes of the bill, ample provision is made for giving relief. The bill requires no duty, imposes no obligation impossible of performance; it is reasonable and practicable in all its provisions.

With all due respect to the Committee on Railroads, I must say that the bill reported by them, by its terms and according to their own showing, is inadequate to the due protection of the rights of the Government. It does not provide for the payment of the debt of the Government at maturity, it is not compulsory, and in view of what we have seen of the practices and spirit of these corporations, it is practically an indefinite postponement of the rights of the Government and the people. It is wholly unacceptable, if it is seriously the purpose of Congress to afford substantial protection for the Government.

Mr. President, the great importance of the subject under consideration must be my apology for detaining the Senate so long. Congress has certainly been remiss in reference to it in the past; I trust it will be so no longer. Justice, right, prudence, the country, alike demand our prompt and efficient action.

Mr. THURMAN. The Senator from Minnesota, [Mr. WINDOM,] the chairman of the Committee on Appropriations, desires that this bill be laid aside informally, not to lose its order, that the Senate may take up the consular and diplomatic appropriation bill.

Mr. HILL. I should like to get the floor for to-morrow on the pending bill.

Mr. THURMAN. Take it now.

Mr. HILL. Very well.

The PRESIDING OFFICER, (Mr. MITCHELL in the chair.) The Senator from Georgia will be recognized as entitled to the floor to-morrow when the consideration of this bill shall be resumed.

Mr. THURMAN. I consent that the bill be laid aside informally in order that the appropriation bill may be taken up.

The PRESIDING OFFICER. The Chair hears no objection, and that will be the understanding.

Mr. THURMAN. I wish to say, however, that I hope it will be the pleasure of the Senate to proceed with the funding bill with somewhat more of industry than it has heretofore. I have no complaints to make; but I hope that we may be able to get to a vote on the bill by the last of this week or very early next week, and therefore that those who desire to speak upon it will be content that there may be two or even three speeches made in a day hereafter. I only express this as my wish; of course, it will be for the Senate to say. My friend from Connecticut [Mr. EATON] says it ought not to be hurried, as it is an im-

portant measure; but if it is to pass at this session of Congress we ought not to spend too much time on it. I shall not make any unreasonable pressure, and every Senator will have an opportunity to speak on it who desires. I do not propose to take the time now, but will only say that I will request the Senate to come to a vote on this bill, if not at the end of this week, then by the middle of next week at the farthest.

Mr. MATTHEWS. When I addressed the Senate on the subject of the funding bill I announced my intention on taking my seat to move that the bill reported by the Railroad Committee should be substituted for the bill reported by the Committee on the Judiciary.

Mr. THURMAN. I thought my colleague had made that motion.

Mr. MATTHEWS. But the motion was not formally entered, and I desire to have it so entered in order that that may be the pending question.

Mr. THURMAN. Let that be moved now.

The PRESIDING OFFICER. By unanimous consent, the amendment reported from the Committee on Railroads will be considered as the pending question.

The amendment of Mr. MATTHEWS is to strike out all after the enacting clause of the bill and insert:

That in order to establish a sinking fund for the purpose of liquidating the claims of the Government on account of the bonds advanced under said act of July 1, 1862, and the acts amending the same or supplemental thereto, to the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company, and to the Union Pacific Railroad Company, the Secretary of the Treasury of the United States is hereby authorized to carry to the credit of a sinking fund for the Central Pacific Railroad Company, a corporation organized and existing under the laws of the State of California, the successor by consolidation of the said Central Pacific Railroad Company of California and the Western Pacific Railroad Company, and to the credit of a sinking fund for the Union Pacific Railroad Company, the amount due, or which may be due, the said companies respectively, for the carriage and transportation of the mails, troops, munitions of war, supplies, and public stores for the Government, under the acts aforesaid, up to and including the 31st day of March, 1878, which, if not amounting at said date to the sum of $1,000,000, shall be made up by the respective companies to that sum each.

SEC. 2. That the said Central Pacific Railroad Company and the Union Pacific Railroad Company shall each pay into the Treasury of the United States, to the credit of said sinking fund, either in lawful money or in any bonds or securities of the United States Government, at par, annually, the sum of $1,000,000, in equal semi-annual installments, on the 1st day of April and October in each year, commencing on the 1st day of October, 1878, and continuing such payments until the 1st day of October, in the year 1900. Interest on all sums placed to the credit of the sinking fund shall be credited and added thereto semi-annually, at the rate of 6 per cent. per annum. Any balance remaining due from either of said companies at the date last aforesaid, after deducting the amount standing to the credit of said sinking fund from the amount of said bonds, together with all interest thereon which shall have been paid by the United States, and interest on the principal of said bonds from the maturity thereof, respectively, to the 1st day of October, A. D. 1900, shall be then divided into fifty equal semi-annual installments, to be paid by said companies respectively, one of which shall be paid on the 1st day of April, and one on the 1st day of October in each year, with all accrued interest from October 1, A. D. 1900, on said balance remaining unpaid at the date of maturity of each installment at the same rate per annum paid by the United States on the larger part of its public debt, on the 1st day of January preceding the date of payment of the several installments: *Provided, however*, That on the failure or refusal of said companies, or either of them, to make any payment in accordance with the provisions of this act for the period of six months, then the provisions hereof in regard to the liquidation of said bonds and interest shall thenceforth, at the option of the United States, become inoperative as to such defaulting company; and the rights and powers of the United States in relation thereto, under the acts to which this is amendatory, shall be in full force and effect as if this act had not been passed, except as hereinafter provided. Or the United States may, in case of default aforesaid, retain as payment on account thereof to the credit of said sinking fund any sum or sums that may accrue to said company so in default on account of the

carriage and transportation of the mails, troops, munitions of war, supplies, and public stores until said default is removed.

SEC. 3. That the payments so to be made by said companies shall be in lieu of all payments required from said companies under said act and the amendments thereto in relation to the reimbursement to the Government of the bonds so issued to said corporations: *Provided, however,* That said companies shall not in any manner be released from their present liabilities to keep the said railroads and telegraph lines constructed under the acts of Congress aforesaid in repair and use, and to transmit dispatches over said telegraph lines, and transport mails, troops, munitions of war, supplies, and public stores upon said railroads for the Government, whenever required to do so by any Department thereof, at fair and reasonable rates of compensation, (said rates not to exceed the amounts paid by private parties for the same kind of service,) the whole amount of which shall be paid by the Government to said companies on the adjustment of the accounts therefor, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid.

SEC. 4. That the mortgage of the Government created by the fifth section of the act of July 1, 1862, amended by the act of July 2, 1864, shall not be in any way impaired or released by the operations of this act until the whole amount of the principal of said bonds, with the interest thereon paid by the United States as aforesaid, shall be fully paid; but said mortgage shall remain in full force and virtue, and, upon the failure of either of said companies to perform the obligations imposed upon them by this act, said mortgage may also be enforced against such defaulting company for any such default; the Government, however, duly crediting and allowing to the company upon said mortgage all payments which may have been made in part execution of this act, and interest thereon to be credited and added thereto semi-annually as hereinbefore provided.

SEC. 5. That this act shall take effect upon its acceptance by said railroad companies, or, if accepted by only one of said companies, then as to the company so accepting the same, which acceptance shall be filed with the Secretary of the Treasury within four months from the passage of this act, and shall show that said company or said companies have agreed to the same at a meeting of stockholders; and if said companies shall make punctual payment of the sums herein provided for and perform all the conditions hereof, this act shall be deemed and construed to be a final settlement between the Government and the company or companies so performing the same, in reference to all matters relating to a reimbursement to the Government by said companies; but in case of failure so to do, Congress may at any time alter, amend, or repeal this act as to such company so making default.

SEC. 6. That all acts and parts of acts inconsistent with this act are hereby repealed.

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MARCH 27, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, the pending question being on the amendment submitted by Mr. MATTHEWS.

Mr. HILL. Mr. President, we have before us two bills, each proposing to establish a sinking fund the better to secure the repayment of a loan made by the United States to the Union Pacific and the Central Pacific Railroad Companies. The comparative merits of the two bills as sinking-fund measures I have not yet considered and shall not now discuss. I especially wish it distinctly understood that nothing I may say in the way of dissenting from the bill reported by the Ju-

diciary Committee is to be taken as implying that I will support the bill reported from the Committee on Railroads. I repeat I have not considered and much less formed an opinion upon either of these bills as measures of wisdom, economy, or expediency. I have thus far confined my investigations, and shall now confine my remarks, to a constitutional question, a question of congressional or legislative power which is raised by these two bills.

The bill reported from the Railroad Committee proposes to establish a sinking fund with the assent of the companies as matter of agreement between the creditor and the debtor. The bill reported from the Judiciary Committee proposes to establish a sinking fund by legislative act only, by the sovereign will of the creditor, not only without the assent of the debtors, but by a command a failure or refusal to obey which by the debtors shall work a forfeiture of estate and subject them or their agents to a criminal prosecution. Such an exercise of power is, in my judgment, not only unauthorized and unconstitutional, but is actually subversive to the great purposes to secure which the Government itself was instituted.

In order to understand clearly the issue presented, I will state the material facts bearing upon the case, and I shall state the contracts as they were finally agreed to:

First, by the act of 1862, Congress created a corporate being, a body-politic, and named it the Union Pacific Railroad Company.

Second, this corporate being, thus created, Congress endowed with all the powers, privileges, and franchises usually granted to corporations, and especially authorized and empowered it "to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph, with the appurtenances," between designated points.

Third, to this being, thus created and endowed, the Congress also granted certain privileges, such as the right of way through the public lands without compensation and through other lands with compensation, and also certain property, and especially alternate sections of the public lands amounting to several millions of acres. All these rights, powers, privileges, and grants were granted without money and without price by the sovereign grace and favor to the child thus born of the sovereign's loins.

Fourth—and I ask the Senate to mark the difference—after thus creating this corporate being, and after thus clothing it with powers and with authority to contract and be contracted with, the Congress itself proposed to authorize at once a contract with it in behalf of the United States. The Congress deemed that the construction of a railroad to the Pacific Ocean would be a great benefit to the Government in the way of saving in transportation, would greatly increase the wealth and power of the people, and perhaps maintain the integrity of the Union. To enable the Union Pacific Railroad Company to construct, equip, and maintain its portion of this railroad and telegraph line to the Pacific Ocean, Congress proposed to make it a loan in bonds, and to secure the completion of the entire line Congress made a like offer of loan to the Central Pacific Railroad Company, a corporation created by the State of California, and also authorized the latter company to extend its line east until it should meet the Union Pacific line going west.

It is important now to understand with accuracy the terms and conditions of this loan, for these terms and conditions formed the inducement to accept the offer and thus enter into the substance of the contract. The material terms and conditions are these: The bonds were to be issued directly by the Government and delivered to the

companies. The Secretary of the Treasury was authorized to deliver the bonds as the roads were completed in sections. The bonds were to mature after thirty years to bear interest at the rate of 6 per cent. per annum payable semi-annually. The loans were to be repaid to the Government as follows: Previous to the maturity of the bonds the companies were to pay to the Government 5 per cent. of their net earnings and one-half the sums due by the Government for transportation over the road; and it is especially stipulated that the Government shall at all times have the preference in the use of the road and telegraph "for all the purposes aforesaid," that is, "to transmit messages and transport mails, troops, munitions of war, supplies, and public stores," and "at fair and reasonable rates of compensation not to exceed the amount paid by private parties for the same kind of service." Whatever balance should remain unpaid by this 5 per cent. and the half of the Government transportation, the companies were to repay at the maturity of the bonds. It is so expressly nominated. To secure its repayment it is stipulated that:

> The issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued.

And in case of default by the companies, the Secretary of the Treasury is directed to take possession of the property so covered by mortgage "for the use and benefit of the United States."

I am stating the contract of loan as finally made. In the first offer in 1862 the United States were to have a first lien. In 1864 the offer was changed by Congress, so that other bonds might be issued by the companies of like amount with those of the Government, and the lien of the Government was to be subordinated to those bonds of the companies, and in this form the offer was accepted.

The entire railroad and telegraph from the Missouri River to the Pacific Ocean were completed in all respects as required, and all the conditions precedent to the issue and delivery of the bonds under the contract of loan were complied with, and the bonds were actually issued and delivered in execution of the authority; and all the rights of the creditor and all the liabilities of the debtor thus became complete, definite, and fixed, and so, as I shall prove, became unchangeable, except by consent of the parties, by every rule of law known, administered, and respected in every just government under the sun. That no power, executive, legislative, or judicial, can, under any pretext whatever, by reservation or otherwise, change, add to, alter, or rescind this contract, except upon allegation and proof of mistake or fraud in its procurement, and that no power or department of Government can grant any remedy or relief touching this contract, its payment, or further security, or can listen to any complaint touching it by either party, except upon allegation and proof of default in some respect by the other party, is the proposition I propose now to establish.

"As the tree falleth, so it must lie," and equally certain is it that as competent parties legally and knowingly contract, so must they abide their contract, and Government has no power to interfere except to protect and enforce on default such contracts according to their terms. In my opinion the bill reported from the Judiciary Committee does propose to interfere with this contract, does propose to affect and even to change the rights and liabilities of the parties to this contract, and without any allegation of default, without any pretense of default, either real or intended, and it proposes that this

interference shall come from the most unauthorized of all Departments of the Government, the Legislative Department.

I have examined this bill carefully, and in all its long string of whereases it alleges no default of any kind or character as the reason for its passage. It meets the question boldly and fearlessly and is a broad assertion that Congress, *by virtue of its power alone*, has authority to change the contract in the manner proposed by the bill. I have listened with anxious attention to the various Senators who have so ably advocated the passage of this bill. I have listened to them all the more anxiously because I desire to co-operate with them in all efforts to secure the Government in the premises, and I am ready to vote for any plan looking to that security which Congress has the constitutional power to adopt.

The advocates of the bill do not agree among themselves in the reasons which they assign for the power claimed. After carefully considering them I am satisfied that all the advocates of this bill are embraced in the three following classes:

1. One class contends that the bill does not change or alter the contract of loan nor the rights or liabilities of the parties to it.

2. A second class insist that the mortgageors are in possession of the property under a trust, first for the benefit of creditors and afterward for the benefit of the owners, and that if the *corpus* of the property covered by the mortgage is insufficient to secure the debt and the mortgageors have become or are likely to become insolvent, the mortgagees have a right to have a sufficiency of the income or earnings dedicated to pay the debt before dividends shall be retained and to accumulate the income or earnings by a sinking fund until the debt shall be discharged.

3. A third class claim that in this case Congress has the power to alter, amend, add to, or rescind this contract in order to secure the debt. Some claim this power as inherent in the Government, and others claim it under the provisions of the acts of 1862 and 1864 which expressly reserve to Congress the right to "alter, add to, amend, or repeal" each of said acts. On this last ground the bill itself is based. But as there are Senators who do not concur with that reason for the power claimed but insist upon one or the other of the two reasons I have previously specified, it is proper that I should notice all these grounds, and I will consider them in their order.

First, does the bill reported from the Judiciary Committee in fact alter, or propose to alter, or will it have the effect to alter this contract of loan or the rights and liabilities of the parties to it? It is certain that the bill does not propose to alter or in any manner affect either of the acts of 1862 and 1864, except those provisions which relate to this debt and which authorize and prescribe the terms of the loan by which the debt was created. The whole bill relates to the establishment of a sinking fund to secure the ultimate payment of the debt, the manner of accumulating that sinking fund, the custody and final distribution of the fund so accumulated, and prescribes the penalties that shall be visited on the company or companies failing or refusing to pay the amount required into that sinking fund. So that, if the bill alters or amends anything in these acts or either of them, it can only be those provisions to which this bill alone refers; that is, those provisions which authorized this loan and the terms and stipulations of it. You nowhere propose to change a single franchise; you nowhere propose to withdraw a single power or privilege granted to these companies; you nowhere propose to interfere with the regulation and administration of the franchise. It is a naked proposition

to secure the debt and prescribe such terms as in your judgment will secure the debt without the assent of the companies, and without alleging any default or maladministration by the companies or either of them.

Now, let us look, first, to the title of the act. What does that propose? I am now discussing the question, mark you, whether the bill does propose to alter and change the contract, for there are Senators around me who have said that they did not look upon it as a bill to alter and change the contract. Let us look, first, to the title of the act itself. In terms it is "a bill to alter and amend" the act of 1862, and also "to alter and amend" the act of 1864. "Alter and amend" what? There is not a provision of this Judiciary Committee bill that refers to anything but the contract and the debt, and you have made your bill an act to "alter and amend." So, again, the preamble says that "the rights of said several companies, respectively, as mentioned in said act of 1862, as well as just security to the United States in the premises, and in respect of all the matters set forth in said act, require that the said act of 1862 be altered and amended as hereinafter enacted." And that "by reason of the premises also, as well as for other causes of public good and justice, the powers provided and reserved in said act of 1864 for the amendment and alteration thereof ought also to be exercised as hereinafter enacted." "Hereinafter enacted" how? You do not hereinafter enact a single alteration or change in a franchise, a power, or privilege of the companies. You hereinafter enact nothing on earth but an alteration of the debt and the terms of its payment. All the alterations and amendments thus proposed relate exclusively to contract of loan and none to the franchises granted in the acts.

Then again the thirteenth section of the bill is in these words:

> That each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of 1862 and of said act of 1864, respectively, and of both said acts.

Thus in the most emphatic manner the Judiciary Committee bill declares its purpose to be "to alter and amend," and every alteration and amendment proposed is of the contract of loan and of the rights and liabilities of the parties to that contract. Not only are the liabilities of the debtors changed, but their burdens are added to by this bill. Thus, under the original contract it is distinctly stipulated that until the bonds mature the debtors shall only pay the creditor 5 per cent. of the net earnings and one-half of the Government transportation, and in the fifth section of the act of 1864 the word "only" is used; "shall only pay." Under this bill you require all the Government transportation to be paid and large sums in addition, so that the whole payment shall amount to 25 per cent. of the net earnings. It is no answer to say the additional sums paid are not to be actually or formally applied to the debt until the bonds mature. The burden upon the debtors is to pay. The fact that the creditor does not formally credit the debt does not lessen the burden of the payment. Besides, the payment is to be made into the treasury of the creditor by the act and order of the creditor; and how can you pay the creditor except by payment into his treasury? and the payment therefore is as legally and actually complete as if the money paid were formally applied and credited on the bonds or the debt.

So the eighteenth section of the act of 1862 can have no meaning except that the stockholders shall have 95 per cent. of the net earnings after deducting all expenditures, and that the Government shall not interfere to regulate the rates of fare and freight until such 95

per cent. of the net earnings shall exceed 10 per cent of the cost of the road. This bill reduces that 95 per cent. to 75 per cent.

Again, this bill not only creates new obligations upon the companies, but provides penalties for their violation. You not only create additional obligations on the companies but you decree by virtue of your own legislative will penalties for the disregard by the companies of these obligations. The bill creates new and additional defaults to authorize the seizure of the road by the Government, and acts which are perfectly legal under existing laws are made illegal under this bill and subject the parties committing them to criminal prosecutions.

Will any man tell me that this is not a bill changing all the terms of this contract? It changes the stipulations; it changes its obligations; it prescribes additional penalties; and it makes acts which are now legal and proper and according to the stipulations of the contract actual crimes for which the parties or their agents can be prosecuted in a court of justice. You not only decree by your sovereign will a change of the contract, but you decree that the agents of the defendants who shall be faithful to the contract already made shall be criminals.

It is needless to add further statements to show that the Judiciary Committee bill does really propose to change and does in effect change the terms of the contract of loan—terms, too, which were offered as inducements to the companies to accept the loan and undertake the construction of the road. To offer terms as an inducement to a party to do a work or take a risk, and then withdraw or change those terms after the work has been done or the risk taken, would be declared fraud if done by an individual, and surely it cannot be denominated less than tyranny and oppression when done by a government.

The second class that support this bill of the Judiciary Committee upon a theory of a trust—and I invite the lawyers in this body to hear this argument—are, I must say, in my judgment easily answered. In the first place, if the power claimed exists at all, it is clearly a judicial and not a legislative power. But the position to justify this bill could not be sustained under the facts of this case, as far as they have been presented to the Senate, even in a court of equity. The rule upon this subject is familiar to lawyers and has been decided in a great number of cases. To authorize courts to interfere in the manner proposed by this bill, three facts must clearly appear: first, that the *corpus* of the property mortgaged is insufficient to pay the debt; second, that the mortgageor is insolvent; and, third, that the mortgageor is in default. Now, mark me, I do not say that the only default is non-payment at the maturity. Any act of the debtor which is wrong and which threatens to destroy the *corpus* covered by the lien of the mortgage is a default. Without the last fact the first two will not be considered. It matters not that the mortgageor is insolvent; it matters not that the property which the creditor selected to secure his debt is insufficient to pay it; those were circumstances he ought to have looked to before he made the contract. Superadded to these two conditions there must be default, some wrongful act or failure to act by the debtor. There can be no remedy where there is no wrong, and there can be no wrong where there is no default, and courts have no right to anticipate and much less to redress a default which has not occurred. This rule is strongly stated by Mr. Thomas in his work on mortgages, in the following language:

> The right of entry by the mortgagee having been abolished, the mortgageor is, both at law and in equity, entitled to the complete enjoyment of the mortgaged

premises and of their rents and profits until the debt is due, unless such rents are expressly pledged for the payment of the debt. If no proceedings are taken for the appointment of a receiver, his right to the rents continues until it has been divested by a foreclosure sale, and until the purchaser has become entitled to possession under the sheriff's deed. Where, however, the security is insufficient and the mortgageor or other person who is personally liable for the payment of the debt is insolvent, the mortgagee may apply for a receiver of the rents and profits of the mortgaged premises which have not yet been collected, and this relief will be granted, unless the person in possession shall give security to account for such rents in case there shall be a deficiency.

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The right to this relief does not result from the relations of the parties, but from equitable considerations alone. It is not a matter of strict right, and each application is addressed to the sound discretion of the court.—*Thomas on Mortgages*, pages 301 and 302.

In support of this authority and this rule Mr. Thomas refers to a large number of cases, every one of which I have examined, and every one of them was a case of foreclosure after default in payment; and I challenge any gentleman to produce a book where a case has ever been decided in which the court took jurisdiction to require additional security or to take the rents, issues, and profits from the mortgageor before default, however insufficient the property might become in the natural course of events, or however insolvent the mortgageor might become. Insolvency in law may be a misfortune; it is not a fault that furnishes a remedy unless it be accompanied by actual waste and wrong to the creditor. The rule is thus stated in the case of the Syracuse City Bank *vs.* Tallman and others, in 31 Barbour, and it is well stated in this decision:

Unless there be a special clause to that effect, in a mortgage, the mortgagee has no lien upon the rents and profits; and as a general rule the mortgageor, until the sale, is entitled to remain in possession.

But courts of equity, under certain circumstances, will, *after default* in an action for foreclosure and sale, anticipate the final judgment by the appointment of a receiver, and in effect put the mortgagee in possession and allow him to divert the rents and profits of the mortgaged premises from the hands of the mortgageor, and hold them as additional security for the payment of the mortgage.

To entitle him to this relief it must appear that the mortgaged premises are an inadequate security for the debt, and that the mortgageor, or other person liable for the mortgage debt, is insolvent.

This relief does not grow directly out of the relations of the parties or the stipulations contained in the mortgage, but out of equitable considerations alone. It is not a matter of strict right, but is addressed to the sound discretion of the court.

*It seems* that when the mortgageor is insolvent, and fails to pay at the day appointed, and the mortgaged premises are an inadequate security, as between the mortgageor and mortgagee it is within the equitable discretion of the court to allow the latter to intercept the rents and profits, for his better protection from loss. And that this is the utmost extent to which the relief has been granted, or to which it can be granted, within any admitted principle of equity.—*The Syracuse City Bank vs. Tallman and others*, 31 *Barbour's Supreme Court Reports*, 201.

This judge says the farthest the rule has ever gone is, that after a default and before judgment of foreclosure, a court of equity will appoint a receiver and divert the rents and profits to the payment of the debt until that judgment of foreclosure and sale under it, if the premises are insufficient to pay the debt, if the mortgageor is insolvent, and if the mortgageor is in default; and I challenge any lawyer on this floor to present a case on record to the contrary where any proceeding was taken in law or equity to divert rents, issues, and profits or earnings, which are not expressly included in the lien, from the mortgageor to the mortgagee until after default by the mortgageor. Whether I am justified in quoting legal rules to a body of men who claim to be bound by no law is a question I will consider directly.

The Government as a creditor can have no more rights than other

creditors. That is the next proposition I propose to establish. When the Government loans money and enters into trade with individuals or corporations, it does so, not as a sovereign, but as a civil corporation, and is subject to all the laws of contract like other persons; and I ask the attention of Senators to this point who tell me that this Government is sovereign; that it has a right in contracts that individuals have not; that you are not bound by the rules of law like individuals.

In Smoot's case, 15 Wallace, 36, the court held "that in the construction and enforcement of contracts made by private parties with the Government, the court is bound to apply the ordinary principles which govern such contracts between individuals." So in the case of Elliot vs. Van Voorst and others, reported in 3 Wallace, jr., and decided by Mr. Justice Grier, that eminent justice said:

> The Government of the United States, though limited in its powers, is supreme in its sphere of action. But its rights as a sovereign, and its prerogatives as such, are coextensive with the functions of government committed to them, and extend no further. Its position as to prerogative is anomalous, owing to our peculiar institutions.
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> When the Government, in the exercise of the rights and functions of a civil corporation, purchases lands to secure a debt, the accident of its sovereignty in other functions cannot be set up to destroy or affect the rights of persons claiming a title or lien on the same lands. Thus, when the Government of the United States becomes a partner in a trading corporation, such as the United States Bank, it divested itself, so far as concerned the transactions of that company, of its sovereign character, and took that of a citizen; consequently its property and interests were subject to the decrees and judgments of courts equally with that of its copartners.

It may be broadly asserted that no case can be found in all the books where a court of equity has entertained an application to do what this bill proposes to do, unless the debtor was in default; and when the Government, abandoning its own courts, seeks to use its sovereign legislative power to enforce, to alter, or even to protect its rights as a civil corporation or contract creditor, it is guilty of the grossest possible usurpation, tyranny, and oppression. The Government is a contractor in the loan of money as a civil corporation. It cannot resort to its sovereign power as a legislative body to claim rights in the construction or remedies in the enforcement of that contract which are not common to the humblest individual in the land. Legislation may authorize contracts to be made, but after they are made legislative power over them ends, I care not whether made by Government or citizen. Courts alone can construe them; courts alone can reform them; courts alone can enforce them; and courts alone can administer them; and even courts can construe them, or reform them, or enforce them, or administer them only as made and agreed to by both the parties.

Let us next proceed to examine the position taken by the third class who support this bill reported from the Judiciary Committee. These are they who take the bold position that Congress has the power by legislation to "add to, alter, amend, or repeal" this contract of loan between the Government and the railroad companies. And, first, I will notice those of this class who hold that this power is inherent in the Government. "One Congress cannot bind another Congress," we are told. "What one Congress can do, another Congress can undo," is repeated. That I believe is the position of my friend from North Carolina, [Mr. MERRIMON.] It is true as to general laws; but a contract is not a law. The law is the authority to make the contract, mark the distinction, and nothing more. Congress may

repeal the authority to make the contract; it may change or modify the authority to make the contract; and, if the authority be repealed before the contract is made, the authority ceases, and the contract cannot afterward be made. But if the contract be made and rights under it vest or obligations by it are incurred, the subsequent repeal of the authority cannot annul or impair the contract or its rights and obligations. I think much of the confusion in this case has grown out of confounding the law which authorizes the contract with the contract itself. And I will say at this point that Congress is not the Government and Congress is not the party to the contract in question. Congress did authorize the contract to be made and did prescribe the terms on which it should be made; but one Congress did not make the contract, and another Congress cannot undo it. It was not the acts of Congress, but the loan of the bonds and their acceptance by the company that constituted the consideration of the contract. It was the completion of the work in the manner prescribed that entitled the companies to the issue and delivery of the bonds. The act for that purpose would have been a dead-letter, would have formed no contract, if the work had not been done; and it was not Congress, as seems to be so commonly supposed, but the "issue and delivery of the bonds that *ipso facto*" constituted the mortgage to secure the repayment of the bonds.

Congress can repeal the authority, and Congress can do it without reserving the power; but can Congress annul the acts done and the rights vested under the authority before its repeal? Can Congress repeal or annul the issue and delivery of the bonds? Can Congress repeal or annul the work done, which entitled the companies to the issue and delivery of the bonds? But the contract cannot subsist independently of its terms. The terms of the contract authorize, constitute the contract itself, as the blocks of marble in this building make the building. Take away those blocks, and the building will not exist. As Congress cannot repeal, annul, impair, or change the contract, so Congress cannot repeal, annul, impair, or change the terms of the contract; and the time of payment, the manner of payment, the terms of payment, the quantities of payment, the security for payment, and the penalty for default in payment are included among the essential, material terms of the contract.

It is suggested as a query in the report made by the Judiciary Committee in support of their bill whether Congress may not impair the obligations of a contract other than by a uniform law of bankruptcy. It is suggested that the inhibition in the Constitution to impair the obligation of contracts is upon the States, and not upon Congress. Is an inhibition upon the States a delegation to Congress? Can Congress do anything because it is not prohibited from doing it? Congress may do many things from which the destruction or impairment of contracts may result. Congress may lay embargoes and declare war, and this may impair or destroy the value of contracts; but does it follow that Congress may therefore enact laws to impair and annul contracts? Congress may declare war, and war does destroy life and liberty as well as property. Can Congress therefore pass laws enacting that the homes of the people shall be burned, or that the citizens shall all be imprisoned or enslaved, or that their heads shall be taken off? Yet all these things may result from a war which Congress has power to declare. If Congress has power directly to declare the result which may come from another power then Congress may declare that our homes shall be burned, that ourselves shall be imprisoned and our heads taken off at the block. The mission of government,

it can never be too often repeated, is to preserve and protect life, liberty, and property, and not to destroy or impair either, except it be necessary to expose some to loss or hazard that all may be protected and defended.

I affirm to-day without qualification that no legislative power in this country, State or Federal, can pass any act with intent to annul or impair the obligations of contract; and even the power to pass a bankrupt law forms no exception to this rule, as that power stands on a different principle. I affirm that this power would not exist even if the prohibition in the Federal Constitution upon the States in this regard did not exist.

A few days ago the Senator from Ohio [Mr. THURMAN] in a colloquy with the Senator from Oregon [Mr. MITCHELL] made the remarkable statement in this Senate that "not one lawyer who argued the Dartmouth College case pretended for one single moment that, if it were not for the provision in the Federal Constitution that no State should make any law impairing the obligation of a contract, the act of the New Hampshire Legislature would not have been perfectly valid." That is the exact language of the honorable Senator from Ohio. Coming from such a distinguished source, this startling statement ought to wake up this Senate to the dangerous mistake we are asked to make in the passage of this Judiciary bill, when the great Ajax in favor of its passage intimates by such a statement so roundly made that Congress has the power to impair the obligation of contracts, and that the States would have held that power but for the provisions in the Federal Constitution. He says that no lawyer pretended to assert the contrary in the Dartmouth College case. Now, sir, Mr. Webster was one of the great lawyers who argued that Dartmouth College case. Hear what he said. Mr. Webster said:

It will be contended by the plaintiffs that these acts—

Of the New Hampshire Legislature—

are not valid and binding on them without their assent: 1. Because they are against common right and the constitution of New Hampshire. 2. Because they are repugnant to the Constitution of the United States.

Then after stating that it was only that clause in the Constitution which enabled the Federal courts to get jurisdiction of the question he adds these grand words, which I commend to the distinguished Senator from Ohio and to the country, in this time, it seems to me, of demoralization on this question.

Mr. Webster said:

It is not too much to assert that the Legislature of New Hampshire would not have been competent to pass the acts in question, and to make them binding on the plaintiffs without their assent, even if there had been in the Constitution of New Hampshire or of the United States no special restriction on their power.

Why?

Because these acts are not the exercise of a power properly legislative. Their object and effect is to take away from one rights, property, and franchises, and to grant them to another. This is not the exercise of a legislative power. To justify the taking away of vested rights, there must be a forfeiture; to adjudge upon and declare which, is the proper province of the judiciary.

Even Chief-Justice Marshall, in pronouncing the decision of the court, said almost as much, for he uses this strong language:

A repeal of this charter—

The Dartmouth College charter, granted by the King in 1769—

A repeal of this charter at any time prior to the adoption of the present Constitution of the United States would have been an extraordinary and unprecedented act of power.

So the distinguished Senator from Ohio was clearly mistaken.

In the forty-fourth number of the Federalist Mr. Madison declared that "laws impairing the obligation of contracts are contrary to what? Contrary to the first principles of the social compact and to every principle of sound legislation." The prohibition was not inserted in the Federal Constitution to take from the States a power they would possess without the prohibition. They might arbitrarily exercise a power they did not possess and oppress a citizen. Mr. Madison speaks of it as only an "additional fence" against the danger of invasion of the "first principles of the social compact" and the proper fundamental charters of natural rights. This prohibition, this "additional fence" was placed in the Federal Constitution to bring the citizen within the protection of the Federal jurisdiction against such dangerous and unnatural legislation in the States. What a commentary upon this purpose of protection it will be if the Federal Government shall itself turn upon the citizen it takes into its protection and itself make him the helpless victim of this dangerous legislation against the first principles of the social compact and the fundamental charters of natural rights! This would be saving the dear lambs from exposure by fencing them for slaughter.

I will proceed now, sir, to the last stronghold of the supporters of this Judiciary bill, and I do so with a confident conviction that it is the weakest of all the positions assumed to justify the bill. It is that Congress derives the power claimed from these provisions of the acts of 1862 and 1864 which expressly reserve to Congress the right at any time "to add to, alter, amend, or repeal" said acts. I invite the attention of the Senate to several considerations, either one of which is and in its nature must be a complete and conclusive negative to the proposition that Congress retains or can have at this time any power whatever to interfere with these contracts as against the companies by virtue of these reservations in the acts named. In the first place, the power reserved must be legislative power. Congress possesses no other power in the matter. But the making of a contract is not a legislative act. So the enforcing of a contract is not a legislative function.

Mr. EDMUNDS. May I ask the Senator from Georgia, then, where we got the power to make the contract which is in this law which we propose to amend?

Mr. HILL. If the Senator will listen, I will answer that question. You get the power to authorize the contract and you do by law authorize the contract to be made; but it is expressly decided that not the Congress but the Government is the party to the contract and not a party in its sovereign character but as a civil corporation.

Mr. EDMUNDS. But, if the Senator will pardon me, he has stated that it is no part of the function of the legislative power to make a contract. Now, then, the only power that has been exerted in respect of these railroads by the acts of 1862 and 1864 was a power exerted by Congress, and the Senator says that that made a contract.

Mr. HILL. I do not so understand that the acts are all. I say here now that if nothing had been done but to pass the acts there would have been no contract. Would there? Answer that. The Senator says there was nothing done but to pass the acts. If there had been nothing done but to pass the acts there would have been corporations created; those corporations would have been vested with corporate powers and privileges, because that is done by the direct act of Congress; but if the acts had been passed and if nothing else had been done would there have been any contract?

Mr. EDMUNDS. No, if the Senator will again pardon me, no more than if I write to my friend and ask him to lend me a hundred dollars and he does not reply, there is no contract; but if he sends me the money there is a contract that I am to repay him.

Mr. HILL. Ah! precisely so, sir. It was the act of the party under the judgment and adjudication of the executive department and the issue and the delivery of the bonds in compliance with the authority of Congress to make the contract that created the obligations and the rights. That is the point. Congress gives the authority to make the contracts. I grant that without the authority the contracts cannot be made, but equally the authority without the other acts makes no contract. Legislation only authorized the contracts to be made. Legislation did not complete the roads nor determine when the roads were completed; nor did legislation issue or deliver the bonds. The acts of Congress constituted the power of attorney which authorized all these things to be done, which prescribed the manner of doing them, and the terms and conditions upon which they should be done. I admit that power of attorney was in its nature and by its terms revocable at will. Note that. Congress can revoke the authority as a mere act of power, but Congress cannot annul the acts done under that authority before that revocation.

Suppose I give the Senator from Michigan [Mr. CHRISTIANCY] a power of attorney to sell a piece of land and in that power prescribe, as I have a right to do, the terms upon which he shall make the sale, and I also say in the power what it is not necessary to say, that it is revocable at will. Is that power of attorney a contract? Without the power the Senator would have no authority to make a contract, but is that power of attorney a contract? Will any man say so? The Senator proceeds, under that power, and on the terms therein prescribed, sells the land to the Senator from Vermont, places the Senator in possession and takes his promissory note due at a distant time. After this sale and before the purchase-money is paid, suppose I undertake to revoke the power to sell or change the terms of the sale. Does that revocation annul or impair the sale? Can I even complain that the terms of the contract as required by my own power of attorney do not sufficiently secure me, and demand a change in the terms, or additional security before there is any default in payment by the purchaser? Congress reserved the power "to add to, alter, amend, or repeal the acts" of 1862 and 1864. We reserved no right or power "to add to, alter, amend, or repeal" the contracts made in pursuance and under the authority of these acts. I am dwelling upon this because I consider it important. When so good a lawyer as the Senator from Vermont, the chairman of the Judiciary Committee, intimates that an act of Congress is the contract when it is the authority for the contract, it is time, I think, for us to watch the distinction. The contract was made, the work was done, the obligations were all incurred, the promises were all made and the bonds were all issued and delivered according to the authority and by virtue of the authority, and while the authority remained unrevoked. The proposition that, under a reserved power to change or revoke the authority, to make the contracts, Congress can change or interfere with the contracts made, or can do anything that will affect to the weight of a hair the rights or liabilities of the other parties to the contracts without their consent and before their default, is most monstrous in its character, and can find nothing to excuse or palliate it in good faith, just precedent, or sound law.

Sir, Congress can do nothing, absolutely nothing, touching these

contracts against the other parties thereto without their consent and before their default.

The view I am presenting is, if possible, rendered still more conclusive when we apply to it another well-settled principle which I have before stated upon authorities cited, and which could be strengthened by a great number of decisions. It is that the Government is not a party to contracts like these contracts of loan in its character as a sovereign but only as a civil corporation. As a sovereign the Government does not lend money. As a civil corporation it does not legislate. As a civil corporation it is subject to the law of contracts precisely as are individuals. When, therefore, the Government as a civil corporation enters into such contracts it cannot reserve the right to use its legislative power as a sovereign to alter, change, or annul that contract to which it is a party. As a civil corporation it can reserve no power which in its character as a civil corporation it does not possess.

Mr. THURMAN. I wish to understand my friend, but will not put a question if it interrupts him at all. He has spoken repeatedly of the Government lending this money as a civil corporation and of what rights the Government has as a mere corporator. I can understand very well how that may be applied were the Government a shareholder in a bank, as in the old United States Bank, or a shareholder in a railroad, or the like; but I am totally at a loss to understand what my friend means by speaking of the Government in granting a loan of its credit acting as a private or mere civil corporation apart and distinct from its character as a government.

Mr. HILL. I will answer the Senator by referring to the decision made that I have just read, by Justice Grier, in which he announced that when the Government purchased land and took a deed to it, it was a party to that contract only as a civil corporation and it so acted, and that its sovereignty had nothing to do with it.

Mr. THURMAN. This was a Government loan.

Mr. HILL. It is the same thing whether the Government loans money or takes a deed. The judge added that whenever the Government becomes a trader it trades only as a civil corporation. Its authority is derived from Congress, it is true. The civil corporation has no authority to make a contract unless Congress grants it, but it is a party to the contract only in its character as a civil corporation. That is what I mean, and I tell the Senator I am using the language of the court; and if the Senator takes issue with it he makes as great a mistake as he did in the colloquy with the Senator from Oregon, when he said that no lawyer in the argument of the Dartmouth College case pretended that but for the provision in the Federal Constitution the laws of New Hampshire would not have been valid.

The power reserved in the acts of 1862 and 1864 is a legislative power to alter, amend, or repeal legislative acts, and not to alter or rescind contracts, though made by the authority of legislative acts. It was a power reserved by and for the benefit of the sovereign, and was not and could not be reserved by or for the benefit of the civil corporation as such. To say that the Government reserves the right to alter or rescind a contract made, because it reserves the right to alter or repeal the legislative act which authorized the contract to be made, is to utterly ignore the distinction between the sovereign and the civil corporation and absolves the Government from all the law and all the obligations of contracts.

Mr. THURMAN. If it does not interrupt the Senator, will he let me ask him a question?

Mr. HILL. Yes, sir.

Mr. THURMAN. Will the Senator tell us what there is in these acts of 1862 and 1864 that Congress can amend, add to, alter, or repeal?

Mr. HILL. Oh, I will do that. I am going to show that.

Mr. THURMAN. I should like to have the Senator do so.

Mr. HILL. I assure the Senator I will do that with a great deal of pleasure, and I shall leave that question I trust as clear as the other, although I am afraid that like that it will not be clear to the distinguished Senator from Ohio.

The Congress is vested by the Constitution with express authority "to borrow money on the credit of the United States." It borrows in its character as a sovereign, and for that reason cannot be sued without its consent, because that express power is given in the Constitution. The difference is between the authority which created the Government. There is no sovereign power conferred to lend money, and when the Government does lend money it does so as a civil corporation upon the authority of sovereign power, and, in case of default, must come to the courts like other individuals or corporations, and can there be impleaded like the humblest citizen in the land. This may seem anomalous, but nevertheless it is true. Judge Grier, in the decision referred to, spoke of the anomalous character of our institutions.

The allusion by the Senator from Michigan [Mr. CHRISTIANCY] to mail contractors and the powers of the Government over their contracts has no relevancy whatever to the question before us. Surely that Senator is too good a constitutional lawyer not to see the difference between the relations of the Government with its servants, employés, officers, and agents, and with those who do not sustain that relation.

And now, Mr. President, what is the true meaning of the reservation to "add to, alter, amend, or repeal," found in slightly varying phraseology in both the act of 1862 and the amendatory act of 1864? I shall come directly to answer the question of the Senator from Ohio, and I will show him to what these words do apply, to what they can only apply; and I affirm it with very great confidence. This point in the case I deem important and I have studied it thoroughly to the best of my humble ability. I say I will prove to the Senate, I trust, (I have certainly satisfied my own mind beyond the shadow of a shade of doubt) that these words do not only not apply to these contracts of loan but in their nature cannot be made to apply to the contracts of loan or to the portions of the charter relating to the contracts as such. These words have a meaning and a history which identifies that meaning beyond the possibility of mistake. First, these words are never used in ordinary legislation because such use is wholly unnecessary. The right to "add to, alter, amend, or repeal" legislative acts is an inherent part of ordinary legislative power. The legislation, then, in which it is necessary to retain such a reservation, must stand upon some peculiar footing by reason of some peculiar character different from ordinary legislation. When we find this peculiarity of legislation we shall be able to comprehend the true purpose, application and meaning of this reservation. The habit of making this reservation is of modern origin, and has grown into its great importance and general use by a great and enlightening experience.

This peculiarity of legislation applies only to the creation of corporations and to the granting and regulating the exercise of the privileges, powers, and franchises of corporations. In every constitu-

tional provision, and—I invite the Senator's attention to this—in every act of legislation, general or special, in which this reservation is found, it relates to corporations. Every case which has been read or referred to in this debate, and every case reported in which these words of reservation have been brought before the courts for adjudication, is a case of a corporation, a case involving questions relating to the franchises of a corporation, the franchises proper, granted by direct fiat of the legislative will, not by the intervention of executive authority. By the law of inductive reasoning, then, we are brought to the conclusion that there is some peculiar reason in the character of the legislation creating corporations and fixing and regulating their franchises which makes this reservation wise or necessary, and which reason does not apply to ordinary legislation. Now, let us find this reason. What is it that is deemed necessary to reserve the power to alter, amend, or repeal and add words which are never found necessary to be used in any other legislation? Evidently it is because of some peculiarity in the nature of the legislation creating corporations and granting corporate powers and franchises. The creation of artificial persons and the granting of powers, privileges, and functions to such persons is a prerogative, a sovereign prerogative power. In England it formerly rested in the Crown; in this country it rests in the States, to be exercised by the Legislature, or by such other power or body as the people in the constitution may direct.

I will not stop now to inquire whether or to what extent it may be exercised by Congress. The exercise of this prerogative power is an act of sovereign grace and favor. It is not bought. There is no consideration for it passing from the favored grantee to the sovereign grantor; but there is generally an inducement for the exercise of this power by the sovereign. That inducement is the public good—a public good which is to be secured and promoted by the manner in which the grantee, the corporation, shall exercise the franchises graciously bestowed upon it. It was held even in England that the sovereign having once granted a charter of incorporation could not revoke it. Having called the child into life it could not destroy it without a judgment of its peers, the courts. Parliament, under a claim of omnipotent power, did sometimes revoke charters, but even this power was not cordially conceded. Thus a corporation once created (except corporations exclusively political) could not afterward be dissolved, except by a judgment of a competent court, after trial, that the franchises had been forfeited, either by a nonuser or misuser of the charter. That was the case in England when the colonies were part of that country.

Early in our history, after the formation of our constitutional system, it was decided both by State courts and the Federal courts that a charter, not political, once granted and accepted, could not be changed or revoked by the legislative power without the consent of the corporation. I quote several cases for that. See University *vs.* Fox, 2 Haywood's Reports; Terrill *vs.* Taylor, 9 Cranch; Pawlett *vs.* Clarke, 9 Cranch. But the great struggle was made in the case of the Trustees of Dartmouth College *vs.* Woodward, 4 Wheaton, 518. That case was elaborately argued, and has since been accepted as settling this question. Settling what question? That the charter once granted could not be changed or altered by the granting power, although freely granted, as an act of favor simply, for the public good, and not altogether or chiefly for the personal good of the grantee.

But the creation of corporations and the grant to them of franchise

powers and privileges is a voluntary grant by the legislative power, and the only consideration for such exercise of this prerogative power is the public good. The grant being thus voluntary, it followed from a well-established principle that the grantor when making it could qualify the grant according to his will, and, among other qualifications, could reserve the right to alter, amend, or withdraw the franchise, and this reservation would become a condition of the grant. Just like an individual person, if he makes a conveyance for value he must follow the terms of the contract. If he makes a voluntary conveyance, if it is a mere grant without consideration, even though it may be for natural love and affection, the grantor can prescribe such terms as he pleases; and in the case of a mere voluntary grant at any time before execution and delivery it can be revoked. The object of the grant being the public good, it was wise and proper that the grantor should retain this control over its exercise, so as to secure more certainly and effectively this object. In this way the habit of making the reservation we are considering originated, and I repeat these words of reservation are only found in charters granted to corporations and they apply to nothing but franchises granted to corporations. The fact that there is something else included in the act which creates a charter besides the franchise does not apply the words of the reservation to those other matters. The words of reservation are put in under this law of necessity to reserve the right to revoke, alter, or change the charter if the grantee, who is the recipient of sovereign power, does not execute the grant to accomplish the object for which it was made. The wonderful increase in the number, kind, and power of corporations in late years has made this reservation all the more important in character and the more frequent in its exercise. This reservation is now to be found in nearly all the States of the Union, sometimes in the constitutions, sometimes as provisions of general laws, and often in special charters; but in all cases the reservations are made to apply to corporations and special legislative grants, and to them only. To apply them to any other kind of legislation is utterly unwarranted and cannot be justified by principle, precedent, reason, or authority.

Now, let us apply these principles to the acts of 1862 and 1864 creating these corporations, and I will tell the Senator from Ohio what, in all those acts, is subject to the power of Congress to alter, repeal, modify, add to, or change. The corporations are created by direct fiat of the legislative will. All the usual and special corporate powers, privileges, and franchises are granted, in like manner, to the corporations so created, and they are granted directly. None of these grants are to be executed by the Secretary of the Treasury or by the executive department. I call the Senator's attention to that. None of these grants in the creation of the corporation, the granting of the corporate privileges, powers, and franchises, are to be executed by the Secretary of the Treasury or by the executive department. They are perfect and complete the moment that they are passed. They are made so by the very act. They are complete and perfect, and executed by the legislative act, and are not made so by another power under authority of the legislative act.

Mr. THURMAN. Let me understand the Senator, if I do not interrupt him too much? If I understand my friend, he makes this distinction, that because these bonds issued by the Government were required to be signed by the Secretary of the Treasury and handed over by the Secretary of the Treasury, that was a different thing from a contract made by Congress on behalf of the Government of the United States.

Mr. HILL. The Senator will hear me. My point is that those provisions of the act of 1862 and 1864 which authorized a loan of money do not perfect any right in anybody. They simply authorized the executive department to do certain things to be done by the department. But I say the creation of the corporation itself, the granting of the franchises to that corporation, is complete by a simple act of legislation without the intervention of executive agencies.

Mr. THURMAN. Now let me put a question to my friend, for he does not seem to have considered it, at least I have not heard it. I ask him when Congress passed this act and promised this loan of bonds, whether the moment the company accepted the charter that was not, according to his view of the case, a contract between the Government and the company, and that in good faith the Government was bound then to issue the bonds, the company doing what would entitle it to the bonds? I ask him, further, whether any executive officer of this Government had the slightest discretion in the world in the business to refuse to issue the bonds or not; whether the Secretary of the Treasury was not bound to issue them according to the mandate of Congress if the company complied?

Now, may I ask the Senator one further question, whether or not in that respect there is the slightest difference between the franchises granted by the charter and this loan promised by the Government? The franchises granted by the charter were not granted upon the mere approval by the President of the act. They did not take effect until the company accepted them, for you cannot force a grant on anybody. Therefore, it required two to make those franchises come into being, just as much as it required two to make this loan come into existence.

Mr. HILL. And the point is that it requires more than two to give effect to this legislation for the loan. My point is that the corporation is created and the franchises conferred by the act of Congress, of course by consent of the other party, and that no executive agency intervened for any purpose; that it becomes complete in the parties by the passage of the act.

Mr. THURMAN. Now let me ask——

Mr. HILL. But I will answer the Senator. Just wait and see if I do not. I answer the Senator that the passage of those provisions of these laws authorizing the loan do not make the loan. It created a right to have a loan, but I say to the Senator before the right to those loans could accrue not only must the company accept the proposition, but they must go to work and earn the consideration which entitled them to it; and the executive department and not the legislative is to determine by its judgment whether they have complied with the contract. The corporations might act until doomsday and they might have had a thousand acts by Congress, but if the executive department had not pronounced and adjudged that they had complied with their contract their right would have been only inchoate and not perfect to the loan. So there is a difference and I want the Senate to note it. It is the difference in the books; it is the difference upon reason. It is the very secret of these reservations in these charters. In a charter granted directly by the sovereign power nothing is required to perfect the grant except the acceptance from the grantee, whereas authority to lend money, an act of Congress to lend money, is only a power conferred to one of the Executive Departments. It is true they must obey authority as they do in every other case, but it is true, as the courts have often decided, that they are the judges whether the acts are complied with, and they must adjudge and

determine that the work has been completed in the manner required before any right to the loan can vest in these corporations.

Mr. THURMAN. I ask the Senator if the corporation does the work, fully and fairly entitling itself to the loan, and a Secretary of the Interior or of the Treasury should refuse willfully and without cause to issue the bonds, whether a mandamus would not lie?

Mr. HILL. Certainly, if the Secretary of the Treasury adjudged that the work was complete; but suppose the executive authority denied that the work was complete. How then? Suppose they will not issue the bonds, will a mandamus lie? Certainly a mandamus will lie where the right is perfect and complete and it is conceded, but what is needed is for the bonds to be issued, signed, and delivered.

But suppose the judges of the contract will not execute it. Suppose the Secretary of the Treasury and the Secretary of the Interior in the respective parts they have got to perform in this agency adjudge that the work is not completed according to the contract, would a thousand acts entitle them to the bonds, would a thousand mandamuses secure them? Sir, it is expressly decided by the Supreme Court in the celebrated case of Decatur *vs.* Spaulding and others, that the Department is the judge of the evidence in such cases; that while we have to command the Department they have a right to judge in certain matters; that when it is referred by Congress to them to judge when a contract had been executed, when a right has become vested which Congress has strictly authorized, the courts cannot interfere with that question; but if the Executive Department says, "You have complied but I am not bound to obey the act of Congress," then the courts will come in by mandamus and compel obedience, but the courts cannot interfere with the judgment of the Secretary or of the Executive Department. I do say to the Senator that before these parties are entitled to this loan they not only had to do the work but the Executive Department had to adjudge the work as rightfully done under the act. Therefore in the matter of this loan another department of the Government was introduced to perfect it and it does not take place upon the mere grant of incorporation and the granting of the franchises to the companies. The Legislature grants those, and the grant is not dependent on the executive authority or any judgment or adjudication by the executive authority for the absolute and unconditional vesting of their rights.

Mr. THURMAN. If the President does not approve the bill, I do not think they will have it.

Mr. HILL. Oh, well, of course that is a part of the legislation. I say the legislation is completed, and when I say that of course I mean the approval of the President or the passage of the bill by two-thirds over his veto. My friend from Ohio is getting decidedly hypercritical.

How different are the contracts of loan authorized by these acts. Here the legislation becomes mere authority to the Executive Department. The loans are for a valuable consideration. The inducements which make the Congress willing to authorize the loans are all set out. The terms and conditions of the loans are prescribed. What shall be done to entitle the corporations to the loans; how the loans shall be secured and how repaid; what shall be the liabilities of the corporations accepting the loans; and when, in what manner, and on what terms the loans shall be repaid are all declared. But all these provisions are nothing but directions to the Executive Department, who are authorized by these legislative provisions—these powers of attorney—to complete the work and deliver the bonds, or adjudge

that they shall not be delivered as the case may be, and Congress actually has nothing to do. The executive power is to ascertain and determine when the corporations have completed the roads in sections; the executive authority is to determine and make known when the entire roads are completed. The Secretary of the Treasury is to issue and deliver the bonds, and here is a point to which I challenge the attention of Senators. It is in that very act of 1862 declared to be the "issue and delivery of the bonds" that constitute the mortgage. You may have a thousand acts, and without all this executive agency intervening, and the actual execution, issue, and delivery of the bonds there would be no mortgage.

Without these executive acts there were no contracts, no loans, and no obligations created, and none could have existed, although by the legislative acts they were all authorized to be made and created. The legislative acts created the corporations and invested them with corporate powers, privileges, and franchises without any intervening executive agency; but the legislative acts did not make but only authorized the contracts of loan to be made by the intervention of executive agency, and without the actual execution of that agency the contracts would have had no existence.

Without the reservations "to add to, alter, amend, or repeal the acts," the charters granted and the franchises conferred could never have been changed or revoked. The reservations were only necessary to retain legislative control over the corporations and their franchises, and for that purpose only were they made. It was not necessary to reserve the right to alter or repeal the *authority* to make the loans.

There is another distinction to which I call the attention of the Senator from Ohio: under the Dartmouth College decision and under all the decisions of all the courts, State and Federal, it was necessary to reserve the right to alter, repeal, or change the franchises granted to a corporation, but it was never held by any court that it was necessary to reserve the right to alter or change the authority to make a loan. The Congress had inherent power to change or repeal the legislative authority, to make the loans, but Congress has and can have no authority inherent or reserved to alter or rescind the contracts of loan after the authority to make them had been executed. From the moment of that execution the authority became exhausted, dead, and the contract became instinct with life which life it will be crime to destroy by force. From that moment the loans became plain contract debts which no power can destroy or impair save the power that made them, the consent of both parties. As the Supreme Court justly say in a recent case (3 Otto, 255:) "Two minds are required to make a contract or to change its terms and conditions after it is executed."

It can make no difference that the authority to make the loans was created in the acts granting the corporate charters, and that is where all this trouble has come from. These gentlemen have never got the true view, because the offer to loan was included in the acts granting the charter. That fact cannot change either the nature or the law of the contracts as made. They stand precisely as if the authority had been given by separate and independent acts of Congress.

Thus, sir, I have shown:

First. That the bill reported from the Judiciary Committee, under the form of altering the acts under authority of which these contracts were made, does in fact seek to alter and change the contracts themselves, and without the consent of the parties to those contracts.

Second. That such legislative power cannot be found in the theory

of trusts. That the power to interfere under that theory exists only in the courts, and that even the courts can exercise such a power only after default.

Third. That the reservations "to alter, amend, or repeal," contained in the acts of 1862, and 1864, apply, and were intended to apply, and can only apply to the corporate existence, powers and franchises of the railroad companies created and confirmed by those acts. That the reservations were not needed or intended to give to Congress the power to alter or repeal the authority to make the loans provided for in those acts, and that no authority can exist in Congress, inherently or by reservation, to alter or rescind the contracts actually made under that authority after that authority had been executed, after the contract had been made, and after the rights and liabilities of the parties to those contracts had become vested and fixed.

I beg to call the attention of the Senate to some considerations upon the assumption, for argument's sake, that the words "to alter, amend, or repeal" do apply to the contract, to the authority to make the contract, and to the terms of the contract, as well as the creation of the corporation and the granting of the franchise. First, I want to call the attention of the Senate to this point: If this reservation to alter or amend does apply, for instance, to that stipulation in the contract which says that one-half of the transportation by the Government shall be paid before the maturity of the bonds, suppose that power to change that is retained by the act of 1862 or the act of 1864. Here is the act of 1871, which expressly directs that that half transportation shall be paid, and that act reserves no right to alter or amend. I wish the Senator from Ohio to hear this. I wish him to reply to it if he can. I say the act of 1871, being the ninth section of an act making appropriations for the support of the Army for the year ending June 30, 1872, and for other purposes, provides that—

> The Secretary of the Treasury is hereby directed to pay over in money to the Pacific Railroad Companies mentioned in said act, and performing services for the United States, one-half of the compensation at the rate provided by law for such services heretofore or hereafter rendered.

And it distinctly says:

> *Provided*, That this section shall not be construed to affect the legal rights of the Government or the obligations of the companies, except as herein specifically provided.

Now, here is the act of 1871, which enacts and declares that the half of this transportation shall be paid by the Secretary of the Treasury to the companies, and no power is reserved in the act of 1871 to alter, amend, or repeal that act. Take the case proposed by my friend here from the Judiciary Committee, and you see that the bill provides in the fourth section—

> That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest.

Mr. THURMAN. Do I understand the Senator from Georgia to say that that act of 1871 is irrepealable?

Mr. HILL. I say it is after the parties have acted under it.

Mr. THURMAN. That is all I wanted to know, if the Senator so stated.

Mr. HILL. I do. Is it not part of the contract?

Mr. THURMAN. Part of what contract?

Mr. HILL. Part of the contract authorized by the acts of 1862 and 1864.

Mr. THURMAN. Now the Senator is coming precisely to where I wanted him to come. He has now got beyond the loan, and I want him to tell me this——

Mr. HILL. I am now arguing the case upon the assumption that the words "to alter, amend, or repeal" apply.

Mr. THURMAN. Then I want to know what in the world it is in that charter which can come within that power of amendment, alteration, or repeal.

Mr. HILL. The Senator does not see the point. I am arguing the case now upon the assumption that the word "alter" applies to everything there. Do you not perceive? But by the act of 1864 Congress agreed that one-half the transportation should be paid to the companies. Congress reserved the right to alter, as the Senator says, in the acts of 1862 and 1864, and for some reason the Government did not pay it. Then you come in with the act of 1871 and re-enact that they should have that one-half.

Mr. BAYARD. May I ask the Senator a question? Does he consider that the power reserved to the Government to amend the law of 1864 at will is exhausted by making an amendment in 1871?

Mr. HILL. I certainly do as to that particular thing, because the last act repeals the first. I think if you in a subsequent act make a direct enactment and do not reserve the power to repeal you cannot afterward alter or change that act.

Mr. THURMAN. The Senator himself, if he will allow me to interrupt him, has stated the matter which shows what the act of 1871 was. Under the act of 1864 the companies were entitled to receive pay for half the transportation account. The Secretary of the Treasury refused to pay them that half under an opinion of Mr. Attorney-General Akerman. The matter was referred to Congress; that is to say, the companies petitioned Congress on the subject. The Judiciary Committees of the Senate and the House reported that under the act of 1864 the companies were entitled to this money, half the transportation account, and the act of 1871 was passed to compel the Secretary to execute the law, not to change the law or to make any new law, but simply to compel him to execute it.

Mr. HILL. No; but you did declare in the act of 1864 that one-half of the transportation shall be paid with a reservation.

Mr. THURMAN. What reservation?

Mr. HILL. The reservation of the right to alter. That is what you say. I am arguing on that assumption now, which the Senator from Ohio does not seem to take. I am arguing upon the assumption that you are right, and yet I show that your bill is unconstitutional; for I say that afterward you enacted again that these companies should have the half transportation without reservation, and that they should not only have it for the past but should have it forever. That is the act of 1871.

Mr. EDMUNDS. Will the Senator read the act of 1871 which shows that?

Mr. HILL. I have just read it.

Mr. EDMUNDS. I wish he would read it again for general information.

Mr. HILL. It is as follows:

> The Secretary of the Treasury is hereby directed to pay over in money to the Pacific Railroad Companies mentioned in said act, and performing services for the United States, one-half of the compensation at the rate provided by law for such services, heretofore or hereafter rendered.

And lest this act might be construed to interfere with the reserva-

tion in the act of 1864 in some other point besides this, you go on and provide—

That this section shall not be construed to affect the legal rights of the Government or the obligations of the companies, except as herein specifically provided.

That is as to the half transportation account.

Mr. BAILEY. May I ask the Senator a question?

Mr. HILL. Yes, sir.

Mr. BAILEY. The Senator says the act of 1871 exhausted the power to amend or repeal the act of 1864.

Mr. HILL. As to this particular provision.

Mr. BAILEY. Will the Senator point out in what particular the act of 1871 alters, amends, or repeals the act of 1864?

Mr. HILL. It re-enacts. Gentlemen will not understand me. In the act of 1864 you enacted a right with a reservation, and you claim the right to change it by virtue of that reservation. In the act of 1871 you enacted the same right without reservation. That is the point; and I defy any lawyer to get over it. Is not the right without a reservation an amendment and improvement upon a right with a reservation? Is not an absolute right better than a qualified right?

Mr. EDMUNDS. May I ask the Senator whether he thinks the act of 1871 became a contract by the mere passage of it?

Mr. HILL. I did not say so. On the contrary, I have previously said that I take it for granted that the companies have been acting under this act.

Mr. EDMUNDS. Now the Senator, who is so very careful about taking nothing for granted, had better not take that, because the companies have not got a cent under that act.

Mr. HILL. They have accepted the act, and therefore have got their rights under it.

Mr. EDMUNDS. I should be glad to see the proof that they have accepted it. They have not got the money, and that is all the act says.

Mr. HILL. There is no proof that shows that they have accepted any act. If the Executive Department has not done its duty, then under the position of my friend from Ohio the companies ought to apply for a mandamus. I say the right became complete upon the passage of the act and its acceptance by the companies.

Mr. EDMUNDS. Yes; but the difficulty about the Senator's argument is, whatever there is of it, and I will express no opinion about that——

Mr. HILL. It makes no difference what the Senator's opinion is about it.

Mr. EDMUNDS. The difficulty about it is that according to his previous proposition these acts do not become contracts or authorized contracts in any effective sense until they are accepted by the other side; it takes two minds. A corporation can only act, not by the general force of nature, but by some corporate performance. Now, then, if the Senator will only look at the published reports officially made to us, he will see in the reports and the evidence that none of the money mentioned in the act of 1871 has been paid to any of the companies; it is in the Treasury still. Therefore, the payment of the money does not raise any implication that the company has accepted this new contract. Where, then, does the Senator get the authority to say that this new contract, as he calls it, is binding, and therefore prevents our amending the act of 1864?

Mr. HILL. I have no evidence that any act passed in relation to these companies has been accepted.

Mr. EDMUNDS. If the Senator will look into the reports, he will find it.

Mr. HILL. I have no evidence myself that the acts of 1862 and 1864 have been accepted. I understand they have been, and as those acts are all published and there has been no protest against them I assume that they have been accepted, and as it was for the benefit of the companies and not their injury, a formal acceptance was not necessary. I take it for granted they have accepted them. If the act of 1871 passed and they accepted it by acting on it, the right became perfect, whether the Secretary of the Treasury paid the money or not.

Now, the Senator from Vermont wants to get to the point that the Secretary of the Treasury must pay the money. If there had been a condition of this grant which made the Secretary of the Treasury the judge as to whether he should pay it, then I grant your position; but as there is no condition to the grant, as the act is absolute and unconditional and without reservation, all that is necessary to make it a contract is for the companies to accept it; and indeed a formal acceptance is not necessary as it is for their benefit. Of course I admit that if the companies have not accepted it or rejected it, it is no contract. An act of Congress is never a contract *per se*. Sometimes it is called so, and in common parlance sometimes spoken of as such; but no lawyer when he comes down to technically correct language would call an act of Congress a contract. It is an element of it of course.

But I go on to another point. Even if the general reservation to alter and repeal applied to the contract and its terms, then I say it cannot be used to take away a specific gift or provision, but only to aid such specific grant. I call the attention of the lawyers of the Senate to this position. The reservation is general; the grant of the authority to make the loan is specific. Mr. Sedgwick says:

> But a particular thing given by the preceding part of a statute shall not be taken away or altered by any subsequent general words.—*Sedgwick on Statutes*, pages 60, 61.

I say these words "to alter, amend, or repeal" cannot be used to destroy any specific stipulation. There is one case in which the repeal may be, and that is where the object of the grant is not carried out, where there is a forfeiture of the charter; but while the companies comply with the contract, while they on their part comply with the specific stipulations, Congress cannot under the general power of reservation negative or destroy a specific grant. The Senator from Indiana [Mr. MCDONALD] laid down the direct reverse of that proposition the other day, and he will find on examination of the authorities that he is incorrect.

Mr. EDMUNDS. I do not wish to interrupt the Senator to his annoyance at all, but I desire to ask him a question with his permission.

Mr. HILL. Certainly.

Mr. EDMUNDS. I am interested in the observations of the Senator, and wish to get at precisely what he means. Do I understand him to mean on this last point he has advanced, that if Congress grant a charter for a particular national bank, to be called the National Bank of North America in the District of Columbia, for twenty years, and that bank accepts the charter and complies with every provision in it, there being at the end a section which says Congress may repeal this act at any time, Congress cannot repeal it within the twenty years unless the company have violated some of the provisions of the charter?

Mr. HILL. That is just exactly my position.

Mr. EDMUNDS. Then I understand the Senator.

Mr. HILL. And I state it precisely in the language, almost, of Chief-Justice Shaw, of Massachusetts.

Mr. EDMUNDS. Not applied to any such subject as that.

Mr. HILL. But he says that these reservations to alter, amend, and repeal, though unlimited in terms, are not unlimited in effect, and one of the limitations is that they must be used to effectuate the original purpose. That is what it is done for. The history of this reservation shows that that is exactly why it was made. The courts had decided that where a charter was once granted it could not be revoked, even though they did not comply with the terms; you had to go to the courts to get a judgment of forfeiture. These reservations are made to meet that difficulty; and I need not stop here to discuss it; but I do say to the Senator from Vermont, although that is not material to this discussion, whenever this question comes to be firmly and finally settled—and the courts are now struggling with it—wherever a corporate charter or privilege has been specifically granted and accepted and the company is complying with it in good faith, the power to repeal does not authorize its destruction, and you can use that power to repeal only to carry out the original purposes of the grant. If the companies, for instance, did not build this road, if they did not keep it up, if they did not accomplish the object the United States had in granting them the franchise, then the United States reserved the right to take back the franchise and give it to persons who would carry out the object. That is the purpose of it exactly.

Mr. CHRISTIANCY. Or refuse to give it to anybody?

Mr. HILL. Certainly; or refuse to give it to anybody.

Mr. CHRISTIANCY. I can see how amendments might be made to the charter for the purpose of carrying out the original purposes of the charter; but when you come to repealing it, it seems to me that is a very different thing.

Mr. HILL. I have just stated it. I can give the case to the Senator again. Suppose the company does not build the road; suppose the company does not keep up the road.

Mr. CHRISTIANCY. The original purpose of the grant.

Mr. HILL. That is it. What is the original purpose of the grant? The original purpose of the grant was to construct the road and keep it up.

Mr. CHRISTIANCY. How will repeal do that?

Mr. HILL. The repeal and giving the right to somebody else would do it. This is not original with me; it is stated in the books. The very purpose of this reservation is to enable Congress to keep it within its power to complete the purposes of the grant; and if it had selected an unfortunate grantee in the first place, one who does not carry out the power, then Congress may revoke the grant and grant it to another, or not grant it at all if it abandons the purpose. But I do say, and I am not going to shrink from it, because the courts have said so, that, though this reservation be unlimited in terms, you cannot construe it to destroy the rights of the company as long as they are faithful to the purposes of the grant.

Mr. EDMUNDS. Has the Senator any case in mind in which any supreme court of any State or country has decided that in such a case as he has been supposing and as I have supposed, an out-and-out repeal of the charter would be unconstitutional?

Mr. HILL. No, sir.

Mr. EDMUNDS. I should think not.

Mr. HILL. Simply because I never knew a Legislature that would do it where other parties were complying with the terms. Therefore that case has never been made. But I will tell the Senator what I have seen. I have not the case here before me, but one of the best decisions ever made upon the meaning of these words to alter, amend, or repeal, and the extent to which the power goes, was made by Chief-Justice Shaw under this very kind of language, the unlimited language used in Massachusetts.

Mr. EDMUNDS. That was the fish-way case.

Mr. HILL. And he says that the object is to secure the original purpose of the grant.

Mr. EDMUNDS. That was the fish-way case.

Mr. HILL. I do not remember the name of it.

Mr. EDMUNDS. Has the Senator seen the latest decision of Chief-Justice Shaw in the insurance case where the Legislature provided that an insurance company should accumulate a sinking fund to pay its debts, and which he held was lawful legislation?

Mr. HILL. Certainly; I can understand that.

Mr. EDMUNDS. Very well.

Mr. HILL. It stands upon a different principle altogether.

Mr. EDMUNDS. Then the Senator ought to understand this.

Mr. HILL. To be sure; and I do. Perhaps the Senator from Vermont is not as wise as he imagines.

Mr. EDMUNDS. No, I presume not.

Mr. HILL. If he is all-wise, some of the courts are not and some of the highest judges in this country. I am not at all intimidated when I stand before these lawyers of the committee, when I heard one of them here the other day say that no lawyer in the Dartmouth College case ever made such and such a declaration. And I say that when learned members of the Judiciary Committee come in here, learned and able as they are, and tell me that in this country, under a Government of limitations upon its powers, there is a right to impair the obligation of a contract, I am not prepared to concede that they are infinitely wise, though they be wiser than I.

Mr. EDMUNDS. The Senator will give me leave to suggest to him that I was not expressing any opinion of my own; I was only asking him, as he had referred to a decision of Chief-Justice Shaw in respect of the fish-way case, what view he took of the later decision of the same court respecting the insurance case, where the Legislature had required the accumulation of a sinking fund to pay its debts.

Mr. HILL. Certainly, and I can perfectly understand that, but I do not wish to stop now to argue it.

Mr. EDMUNDS. Very well.

Mr. HILL. But there is a broad difference between an insurance case and a contract of loan to a railroad corporation; a very broad difference. The very object and terms and conditions of the creation of an insurance company are that it shall be safe for the people to take risks in. That is the very object of a grant to an insurance company, that it shall be safe to the people, and the Government is but effectuating its object and carrying out the purpose of the grant to an insurance company when it sees to it that it makes it perfectly secure for the people to insure in. The business of an insurance company is to take risks; the business of a railroad corporation is not to take risks upon life or fire either.

Mr. EDMUNDS. But is it not its business to pay its debts that the law authorized it to contract?

Mr. HILL. Certainly, according to the terms of the contract; certainly, when the debt is due.

Mr. EATON. Just what the insurance company did not do.

Mr. HILL. Precisely, for the insurance company stands on a wholly different principle. The very purpose of incorporating it is to enable it to take risks, and it is the duty of the Government to see that it is safe for the people to insure in it. This is a different thing.

Mr. BAILEY. May I ask the Senator is it not also the duty of the railroad company so to manage its affairs that it may be able to perform the functions for which it was organized?

Mr. HILL. Yes, sir.

Mr. BAILEY. And remain in a state of solvency and preserve its railroad to the corporation?

Mr. HILL. Certainly; and does anybody allege here that this corporation is not doing this? Does anybody here allege that this corporation is not keeping up the road?

Mr. BAILEY. Does not the direction of the road in its communication to the Judiciary Committee state that unless there shall be a sinking fund this corporation will become insolvent and the road will pass into other hands?

Mr. HILL. Supposing it does; is that insolvency to result from the administration of the road or from the natural course of events and the natural shrinkage of property? The debtor is not responsible for natural shrinkage in the value of his property. He is not responsible for misfortunes; he is only responsible for default. If this company will say that by reason of their management they are destroying the corporation, that its insolvency is resulting from their maladministration, I can concede the case, because then there is default.

Mr. BAILEY. Permit me to ask another question. Does not the company avow that it is distributing from year to year its assets, its income or net earnings, and that that course of procedure will bring about the very condition which it predicts in the future?

Mr. HILL. I do not know what the companies have said nor do I care; but I do say that, if the companies are paying their debts as they fall due, and paying the interest as it falls due, and keeping up the road and operating the road justly, they have a right to the dividends, because the eighteenth section of the charter says so; but, because the mortgageor is insolvent and because the property mortgaged is insufficient to pay the debt, that does not give the creditor a right to the earnings before his debt is due. I admit and contend that the earnings uncollected when this debt falls due the court may seize and apply to the debt; but I defy the Senator to find a case where there is no default or maladministration where a debtor is compelled to apply the income of the property to the payment of his debt before the debt falls due.

But this view can be made still stronger. If under the general reservation to alter or amend Congress retained the power to change or annul the specific terms of the contract, then Congress has reserved the power to commit a fraud on the companies, and this cannot be true. Now, I put it to the Senate, I put it to my friend the able Senator from Michigan, a man whose mind is so able and whose heart is so just, why did the Government agree to these liberal terms with the companies?

Mr. CHRISTIANCY. I will answer, if the Senator will allow me, exactly why they agreed to them: because they reserved all the power they ever had and parted with none of it.

Mr. HILL. Then I understand the Senator to say that the Government agreed with the companies, "If you will take the risk, undergo the labor, and build a road which the Government desires built, which

is important to the integrity of the Union, which is important for the uses of the Government, and the Government therefore needs that road; if you gentlemen will go forward and build this road, we will advance you so much money and we will not require you to pay that money back for thirty years, except half transportation and 5 per cent. of the net earnings;" and I understand the Senator to say that, when the Government said that to the companies as an inducement for them to take the contract and build the road, the moment the road is built the Government can take back the inducement. Do I understand any man to say that?

Mr. CHRISTIANCY. I understand that the Government understood and that the corporators understood that their rights under such a reservation of power would rest upon the sound discretion of Congress, and I see no absurdity in any man trusting to that sound discretion of Congress.

Mr. HILL. Mr. President, if the subject had been bound to trust to the discretion of a legislative body, our fathers acted unwisely when they declared independence of Great Britain, who asserted the right to levy a tax but would not do it. Sir, the Revolution was fought upon the assertion of a power, and not solely upon the manner of its exercise; and I put it to the Senator, and I put it to the Senate, when this contract was made and the Government agreed to take only one-half the transportation to apply to the interest before the maturity of the bonds, was it not an inducement to the companies to build the road? When they actually built the road, have you a right to take the whole compensation away from them? That is the point. You say "trust to the discretion of Congress!"

Mr. BECK. Will the Senator allow me? I do not desire to interrupt the Senator but I wish to have information. In the case of Miller *vs.* The State, 15 Wallace's Reports, the court say:

> Power to legislate, founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such a charter, and which, by a legitimate use of the powers granted have become vested in the corporation, but it may be safely affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant.

Mr. HILL. Exactly.

Mr. BECK. "Or to secure the due administration of its affairs."

Mr. HILL. Certainly.

Mr. BECK. "So as to protect the rights of the stockholders and of creditors, and for the proper disposition of the assets."

Mr. HILL. Certainly.

Mr. BECK. Now the question I desire to ask is what is there in the bill of the Judiciary Committee that goes beyond the authority asserted in this opinion that may be exercised for the purpose of protecting the rights of the creditors of the companies?

Mr. HILL. I will tell the Senator. Those words are used in that book according to their legal signification. Now, then, the Government has no right to interfere to protect creditors except where there is a default of the debtor; then there must be "a proper disposition of the assets."

Mr. BECK. Under the authority reserved to alter, amend, or change, which was a part of the grant of course, if the power is as comprehensive as this opinion says, and if it is admitted that the companies are not only looking to insolvency but so far dividing the earnings as to become certainly insolvent when this debt matures, under the decision of the Supreme Court which I have just read, is it not cer-

tain that Congress not only has the power but ought to protect the creditors against that probability?

Mr. HILL. Whenever the creditors need protection and whenever protection is extended according to the contract. That is what it means. It says "proper," that is according to the rights of both parties. You cannot protect the creditor by destroying the rights of the debtor. It does not mean that the creditor shall have protection against a bad contract by making it a good one. He is entitled to protection according to his contract, against default or breaches by the debtor.

Mr. BECK. The great object in making the loan by the Government was to have this road perpetually held by the corporation for their use. Now if that be true, and if the companies show themselves that in the near future they will be certainly insolvent, that the road will be sold out and bought in by other people who will be under no such obligation and thereby the Government will not have the perpetual use of it and the Government will not get its money, either its principal or interest, unless there is some means taken to so regulate the administration of the road as to protect the creditors of the companies, have we not a right to resort to such means?

Mr. HILL. I will say to the Senator that may be all true, but you cannot protect the creditors by denying the stockholders or the owners of the road as the debtors the rights they are entitled to. You must protect the creditor by proper means; you must protect the creditor by such means as the existing law authorizes, as existing remedies permit. You cannot resort to extraordinary remedies; you cannot violate the charter; you cannot protect the creditor by destroying the rights of the debtor. You must do it in a way that is consistent with the original purposes of the charter. This bill does not allege the acts the Senator states. It does not allege the companies are doing anything to lessen the value of the security the Government agreed to take. Show me that the companies are doing such wrongs and I will show ample remedies. Even other purchasers would get no new rights other than the charter.

Mr. BECK. The original purpose of the charter was to secure a perpetual road; another was to pay the debt of the companies; another purpose was of course to protect the stockholders; but those stockholders have no rights until the debts are paid; and if the administration are dividing out the assets of the road to stockholders, to the absolute, certain destruction of the debts of the companies and the rights of the Government, ought we not to interfere by legislation before they go further?

Mr. HILL. The Senator will see the mistake he has made. He says the stockholders have no rights until the creditors are paid.

Mr. BECK. No ultimate rights.

Mr. HILL. They have immediate rights. They have a right by the very terms of the charter to 10 per cent. dividends.

Mr. BECK. I mean that to the ultimate profits they have no right, and therefore they can destroy the security by the course I have indicated.

Mr. HILL. If they are doing anything to destroy the security, if the destruction of the security is the result of their act, all right; then they are in default and then you can take the road out of their hands and put it in the hands of a receiver for the protection of the creditors, if you want to. That is all that case is; it is all any case is. If there is default, then the thing can be done; but I tell the Senator there is no case on earth where the proper protection of the

creditor means anything but always the proper discharge of the duties of the debtor; and this contract, which says they are entitled to the 10 per cent., was made with the distinct knowledge of the fact that the road might be insolvent before the debt became due. The power to alter was reserved; but it must be resorted to so as not to impair or destroy vested rights.

Mr. BECK. I ask the Senator what part of the bill of the Judiciary Committee destroys any vested right?

Mr. HILL. It destroys a vested right in this: it distinctly provides that they shall pay 25 per cent. of the net earnings instead of 5; it distinctly provides that they shall pay the Government the whole of the Government transportation instead of half, and the charter distinctly said they should not pay but 5 per cent. net earnings, and the charter distinctly stipulated that they should not be required to pay but half the Government transportation. Now, take the law as you find it, make any act you please to carry out the original purpose of the charter, to protect the creditors from the wrong of the debtor, but do not protect the creditor because the creditor made a bad contract. There is no such law as that. You are proposing to protect the creditor because he made a bad contract at first; you are not proposing to protect the creditor against any maladministration of the debtor. Nobody alleges that it is the bad management of the road that is bringing about this result; it is the mere opinion of the natural course of events. I take this occasion to say that for myself I think the road is worth the money or will be in thirty years or by the time these bonds are due; but that is a mere matter of opinion. You would have no right to take charge of a corporation and administer its assets because twenty years hereafter it may be in default. It is an absurdity.

Again, the rule is distinctly laid down that the conditions or reservations in a contract "which are repugnant to the grant or gift by which they are created or to which they are annexed are void." (2d Story's Equity Jurisprudence, section 1304.) If the reservation would be void if literally repugnant, much less can you put a construction on the reservation which would make it repugnant. Now, you put a construction on this right reserved which negatives a specific right granted in the charter. The law is that if the reservation literally meant that, it would be void; and now you seek to put a construction on it to make it mean that. That you cannot do.

Still again, you cannot use or construe this reservation to "alter, amend, and repeal" so as to defeat or annul the known meaning or understanding of the parties at the time the contract was made; and upon this subject I have authorities here from Judge Kent that are very explicit and clear.

Judge Kent, after citing Bacon's rule, says:

> The modern and more reasonable practice is to give to the language its just sense and to search for the precise meaning and one requisite to give due and fair effect to the contract without adopting either the rule of a rigid or of even indulgent construction. * * * The true principle of sound ethics is to give the contract the sense in which the person making the promise believed the other party to have accepted it, if he in fact did so understand and accept it.—2 *Kent's Com.*, 556, 557.

That is also the rule of construction of treaties, says Vattel.

> The mutual intention of the parties to the instrument is the great and sometimes the difficult object of inquiry when the terms of it are not free from ambiguity. To reach and carry that intention into effect the law when it becomes necessary will control even the literal terms of the contract, if they manifestly contravene the purpose; and many cases are given in the books in which the plain intent has prevailed over the strict letter of the contract.—2 *Kent*, 555.

Now I put to every Senator here, when these debtors accepted this charter with a distinct stipulation that the Government, until the maturity of the bonds, would not exact from them anything in payment but half the Government transportation and 5 per cent. net earnings, was it understood by either party that the Government should change that and exact all or exact more? For if you have power to exact more you have power to exact all. How did the companies understand it? How did the Government say they understood it? How have the Supreme Court decided they understood it? They understood it according to its very language. That is the way they took it. Now for you to exert a general power of reservation to destroy the sense of a specific grant, to destroy the sense in which both parties understood it, in which especially the debtor understood it—to exert that general power to destroy that specific grant on that specific stipulation, is a fraud in law, say the books, and you have no power to do it. I admit the full force of the decision read by the Senator from Kentucky, and I wish the Senator from Vermont had heard it. It shows that the reservation of the power to alter, amend, or repeal is to be used to effectuate the original purpose of the grant.

Chancellor Kent continues:

> So the mutual intention of the parties to the instrument is the great and sometimes the difficult object of inquiry when the terms of it are not free from ambiguity, and to reach and carry that intention into effect, the law, when it becomes necessary, will control the literal terms of the contract, and if manifestly the contrary is the purpose, and many cases are given in the books in which the plain intent has prevailed over the strict letter of the contract.

Why? Because if you induce a man to undertake a risk, to perform a labor under a promise which was specifically given that he shall reap certain rewards, and after he has performed the labor and taken the risk, for you, under your reservation of a general power which means to carry out the original purpose, destroy that specific grant, you commit a fraud. See what an absurdity. Here the Supreme Court has decided that under this contract no interest is to be paid except the 5 per cent. of the net earnings until the maturity of the debt. Now, you come in here by legislative power, contrary to the adjudicated intention of the parties, (for the Supreme Court of the United States in their decision adjudicated the original intention and understanding,) and attempt to unsettle the adjudication by declaring that in some form an amount shall be paid more than was stipulated. The Supreme Court say the original intention of the parties was that nothing but half transportation and 5 per cent. should be paid. Here Kent says, you cannot by a general reservation alter the original intention, you must carry out that original intention and understanding of the parties, and you by this very bill seek to defeat and destroy that original intention.

In his able argument the Senator from Michigan [Mr. CRISTIANCY] said in substance that it was no argument against the existence of this power to show it might be injudiciously used. So I tell that Senator it is no argument in favor of the existence of the power to show it might be wisely or even usefully used. If the power does not exist it cannot be used either wisely or unwisely.

If Congress can change this contract in any respect it can change it in all respects. If this general reservation to alter or amend gives Congress power to compel the payment of one dollar more than the stipulations require before the maturity of the bonds, then Congress can require every dollar to be paid before maturity.

Can Congress by legislation declare that the interest shall be more

than 6 per cent? I ask the Senator from Kentucky that question. The original act declares that the interest shall be 6 per cent. Can Congress now by virtue of its reserved power alter that interest and say it shall be 8 per cent on 10 per cent? Can it declare that the bonds shall be due now? The original contract said the bonds should be due in thirty years and the debt should be paid at the maturity of the bonds. Can you under this power to alter or amend declare that the bonds shall be due to-morrow? If you have the power to declare that the whole transportation shall be paid when the contract requires that only one-half shall be paid, then you have power to declare that the interest shall be 10 per cent. though the contract says 6; then you have the power to declare that the bonds shall be due to-morrow though the contract says they shall be due in thirty years from their date.

But I appeal to gentlemen on another point, and I wish they would answer the question: Can Congress repeal the act of 1864 and reinstate the first lien of the Government bonds? If so, that is what you ought to do. If the position occupied by the gentlemen of the Judiciary Committee, an able committee I concede, is true, as one of them intimates, that the act of 1864 was a fraud—one of them has intimated even that it was the result of bribery—if that be true, why not repeal the act of 1864?

Mr. CHRISTIANCY. The rights of third persons would be affected.

Mr. HILL. The bondholders are not third persons. The bondholders took under that act; the bondholders took with notice of that act. That act was part of their rights. Now, when the bondholder took his bond, he took it with notice in the law that Congress had a right to change the lien that was given in his bond. That is what you say you cannot get rid of. Everybody who takes that bond takes it with notice of that law; he takes it with notice that there is power to alter, amend, or repeal; and if you have power to alter, amend, or repeal anything in that act, you have a right to repeal it all, and I put it to the Senator, can you now repeal the act of 1864 and reinstate the first lien of the Government debt? You can if you can do what you propose here. If you can change the contract in one respect you can change it in all. If you can say that the whole transportation shall be paid when the contract said only half, you can say that the first lien, which was given by the act of 1862 and subordinated to other bonds by the act of 1864, can be reinstated, because every man that bought these bonds purchased them with notice of the law, with the law before him; and if the construction the gentlemen put on the law be correct, he buys it with distinct notice that his bond may be destroyed to-morrow. It is perfectly legitimate to say that you have not the power when the power is absurd. You cannot escape the argument that if you have power to change in one respect you have power to change in all. You reserved the power in the act of 1864 to repeal that act; now let any lawyer answer me, will the repeal reinstate the first lien of the Government bonds?

Mr. CHRISTIANCY. No man says that it would.

Mr. HILL. I say it is so if the other position is correct, and you cannot show the difference. The bonds may be in the hands of the stockholders; the bonds may be in the hands of the corporation; I cannot tell. I do not care where they are; whoever took them took them with notice of the law; and on the terms of the law if you can change the contract in one respect by reason of that reservation, you can change it in all. If you can change it in all, you can change it in any. You must abide the contract or not.

Mr. BECK. The act of 1864 gives the right to alter, amend, and repeal. In your mind that is an absolute nullity on that position.

Mr. HILL. I say those words apply to the exercise of the corporate franchise; but they are an absolute nullity as applied to the contract. The Senate does not understand me. I have already made a long argument to show that the words "alter, amend, or repeal," retain the power to the Government to see that the original purpose of the charter is carried out.

Mr. BECK. And one purpose is, of course, to protect the creditors; and now you say we have no power to protect them, although the management of the corporation may come and admit that they intend to make it impossible to pay its debts. The Senator's position is that under the power to alter, amend, or repeal we have no right to require any security of the corporation.

Mr. HILL. I am not aware that this body acts on assertion. The Judiciary Committee has not informed us that the company said they intend to make the property insolvent. Show me that, and put your bill on that ground.

Mr. BECK. They have proved by the treasurer of the company himself that that would be the effect.

Mr. HILL. Then I ask the Senate to amend the bill and put this legislation on that ground. But I tell the Senator, if that is true, his remedy is not here. That decision says "by proper means the creditor shall be protected." If it be true that these corporations are using the property for the purpose of destroying its value, for the purpose of preventing the collection of its debts, I tell you you have got an ample remedy. Go into the courts and the courts will restrain them, and the courts will require them to give an additional security. What I am arguing against is this monstrous claim of legislative power to exercise judicial functions. There is no trouble about protecting creditors. I admit the creditors are entitled to protection. The Senator is wrong when he says I deny that. I admit it, but it is protection known to the law; it is protection given according to the forms and rules of law under the remedies provided by law, and not by the exertion of an extraordinary legislative power.

If Congress can do what is proposed, it can do all these things; if it cannot do all these things, it can do none of them. Mr. President, take it as you please, this is the most remarkable bill that has ever been introduced into a legislative body, and I say it with profound respect for the distinguished members of the Judiciary Committee. I believe the doctrine I am laying down here to-day will be sustained thoroughly by the Supreme Court if you pass this bill. I have come to the conclusions I have announced contrary to my will. I took it for granted that I should vote with the Judiciary Committee; I took it for granted that they were correct in their construction of power until the discussion sprang up and I got possession of the question and investigated it for myself. I do say with all due deference to that committee that this bill asserts a most monstrous power. What do you propose to do? Why, sir, speaking in the language of a lawyer, this is a bill filed in a legislative body to construe the contract. How? By declaring the words "net earnings" shall mean what the legislative will shall declare them to mean and not what the law says they do mean.

Mr. CHRISTIANCY. Will the Senator allow me?

Mr. HILL. Yes, if I am wrong.

Mr. CHRISTIANCY. The committee have not by the bill endeavored to define what "net earnings" mean under the original law at all.

Mr. HILL. Certainly.

Mr. CHRISTIANCY. They have simply provided what they shall mean hereafter.

Mr. HILL. That is exactly what I understand. It is claimed by the Senator from Ohio that here is an existing contract where the words "net earnings" are used, and that you can by legislation after that contract was made give a new meaning to the words. That is the proposition.

Mr. CHRISTIANCY. We can amend the law.

Mr. HILL. Amend and destroy.

Mr. SARGENT. A case is now pending in the Supreme Court, brought in obedience to legislation of Congress, for the Supreme Court to define what "net earnings" mean, and this bill simply provides that this decision or definition of the Supreme Court shall apply to matters heretofore, but hereafter the will of Congress shall be substituted for the rule the Supreme Court shall lay down.

Mr. CHRISTIANCY. But under the power of amendment we require them to proceed hereafter on the basis fixed by law.

Mr. HILL. Precisely; that you can provide by the legislative will that hereafter net earnings shall mean gross earnings. You cannot do that. That is the power claimed. There is no escape from it. Will you tell me that the legislature can legislate absurdity into truth? And yet, if your position is true that you have the right to declare what "net earnings" shall be in the future and that you shall give to these words a meaning which the law never heretofore gave them, and which was not the meaning when the parties agreed to these words, you declare that you have a right to say that "net earnings" shall hereafter mean gross earnings. That is your bill.

This is not only a bill to construe the words not according to the meaning the words have by law and in the lexicons, but what the legislative will shall say they ought to have: but it is, in the second place, a bill filed to reform the contract by inserting in it not what the parties intended, but what Congress now wills shall be the contract.

Mr. CHRISTIANCY. Under the power to amend.

Mr. HILL. Ah! The decision read by the Senator from Kentucky, which I am glad he read—a wise decision—says that the power to alter and amend must be exercised to carry out the original purpose, and not to destroy it.

Mr. CHRISTIANCY. That is only one of them.

Mr. HILL. And to do everything in accordance with the laws of the land in the protection of the rights of all companies and creditors. But you are doing now what is a destruction of the contract. If you have a right to say now that you can reform the contract by an act of Congress, why can you not repeal the act of 1864 and reinstate the first lien of the Government bonds? You say you cannot do that. Why? Where is the limitation, and why can you do one and not the other? Why can you not say the companies shall pay 10 per cent. interest instead of 6? Why can you not say they shall pay 50 per cent.? You say you have the power to do it. If you can change the meaning of words, if you can change legal definitions, if you can make a new contract, not according to the intention of the parties when the old contract was made, but you can make a contract according to your will now, what is it you cannot do? There is no pretense that anything was omitted which the parties intended to insert or that anything was inserted which was agreed to be omitted; and yet you bring into this legislative body a bill to reform a contract

and make a new one, and you give no earthly reason for it but that you made a bad bargain and now you want to make a good one. The one you made by consent and agreement you say is a bad one, and you will make another by your own act without consent or agreement.

Again, it is a bill filed to foreclose a mortgage before the mortgageor is in default, and to collect the debts of other mortgagees without their request or authority and without their foreclosure in the courts. Here is a remarkable provision of this bill of the Judiciary Committee. These other mortgages of the companies, of course, have to be foreclosed in the ordinary way, if the companies shall be in default when they are due; but you propose to command these companies to pay money into your Treasury, and which money shall be paid to these bondholders when they become due without a foreclosure; that is, you assert not only your own rights and the rights of others, but relieve the other mortgagees of the obligation to foreclose their mortgages according to the law and the contract.

Then, again, it is a common-law action of debt to collect a debt before it is due. It is a bill, I repeat, to make the acts of the debtors crimes, which acts the contract stipulated they might do and which were offered them as inducements to make the contract. Sir, I affirm that the legislature of England in the time of James I never asserted a more absolute power. Here certain things that these corporators might do were provided for in the charter; you stipulated that they might do them; and now you come in by this bill and propose to make it a crime if they do them! Was such a monstrous power ever heard of to be exercised by legislators? Surely, if this be true, the legislative power of this body is indeed omnipotent.

In plain language, I repeat what I have said: it is a bill to make a good contract without agreement solely because the Government apprehends it made a bad contract by agreement, and after the chief inducements to the Government to make the contract have been fully realized.

It is a bill which can find no precedent in the courts of law, no authority in the powers of legislation, and—I say it respectfully—in my judgment, no justification in the forum of conscience.

Mr. President, fortunately for me I was not here when this contract was made. I had no agency in it nor connection with it. I am not going to visit criticism upon those who did make it. I can see one marked difference between the temper of the gentlemen here now and those who were here then when this contract was made. I see the great purpose of the Government then was to get the roads constructed. The great purpose of the Government was to link together the Union, to get cheap transportation and keep up those works, and it was said over and over that the Government to do that was willing to make this loan, even if it lost it. Now the road is built, now the road is kept up, now the labor and the risk have been taken, now the Government has accomplished its great object, now the Union is saved and bound together by bonds of iron from sea to sea, now all this is done, suddenly there wakes up a new spirit to say that the whole principle of the loan shall be changed. Precedents are to be disregarded, courts are to be abandoned, and rights are to be trampled upon, powers unknown to the British Parliament in its most omnipotent days are to be exercised, and acts, just in themselves, are denounced as crimes, to enable you to collect your debt before it is due. Fortunately for me, I have no prejudices *pro* or *con;* I regard myself in this matter as a judge; but, if I should exhibit the passion and temper against these corporations that some gentlemen have exhibited on

this floor, I should think I was not a proper judge. I should be afraid that I was acting under some influence of bias or prejudice. Sir, if the Government has made a bad contract so far as the money venture is concerned, let it abide that contract.

I do not share the apprehensions which some gentlemen have uttered on this floor of danger from these corporations. The learned Senator from Alabama [Mr. MORGAN] said if we did not govern these corporations the corporations would soon govern the country. I have no apprehension of that kind. The Senator from North Carolina [Mr. MERRIMON] also pursued that line of argument. The idea that a few moneyed corporations are to govern this country! Sir, is there no power to control these corporations? I concede that under this reservation you have the power to control these corporations in the exercise of the franchises; you have the power to preserve the road; you have the power to keep up the road; you have the power to regulate the freights; you have the power under the act and the decisions of the courts to protect the people from unjust oppression. All these things you can do; but it does not follow that you can make a new contract, that you can break an old contract, and that you can collect your money before it is due, or that you can take steps against a debtor unknown to the courts of any civilized country.

Sir, you can control these corporations; you have power to control them; the interest of the country will control them; the natural loss of trade will control them; competition will affect them. There are a thousand agencies at work that will control these corporations, and I tell you this great Government with its forty-five million people will not become a sick and fainting Cæsar to cry to these corporations "Give me some drink, Titinius!"

But while I have no fear that these moneyed corporations are going to subjugate this great Government, I have a fear, I do dread the principle asserted in this bill, which is to give Congress a perpetual right of interference with these companies. If you have a right to pass this bill, you have a right to change your notions next session, and pass another, and the next session to pass another, and the next session to pass another, and so with all bills in relation to the contract. If you find at the next session that you think the money you ought to have paid into the sinking fund is not enough to secure the debt, then you will pass a bill to get more, and what is the result? You keep these companies constantly in legislative litigation; you keep them constantly uneasy, you keep them constantly paralyzed; you keep them constantly interested in coming here to control legislation. Sir, I tell you, if you would stop the evils of which you complain, take these companies out of Congress, take these companies out of politics; do not make it the interest of these companies to have an active part in every presidential and congressional election; do not subject the companies to keep agents here at every session of Congress to watch and prevent interference by Congress with their rights.

My reflections lead me strongly to the conclusion that the best way to secure your debt, the best way to relieve the country of the scandals connected with these corporations, is to say to them, "Go, keep your contract; operate your roads just as you contracted; keep up your work, fulfill your contract in all respects, and pay your debts when they become due, and Congress will not interfere with you. Do not be afraid of Congress as long as you keep your contracts." Whenever they do not do it, then you have the power to interfere. I concede it; but you cannot administer relief in anticipation of default; you must wait till the default comes. That is the power

you have over them. They will know that if they violate the charter, if they get extravagant, if they are not just to the people, then you will step in and interfere; but you do not put this bill on this ground. If the Judiciary Committee would put this bill upon the ground of default in the companies in any sense, of malfeasance by the companies, of maladministration by the companies, I would yield, except to say that as to this loan the proper remedy would be in the courts, but I would admit there ought to be some interference either by the courts or by the Legislature; but so far as the franchises are concerned, if they do not execute them, you have a right to interfere by legislation, and you have that power always. That is the power you have; that is the power you intended to have.

Sir, there is another thing I dread in addition to this perpetual interference of Congress with these corporations—the very source of infinite scandal if you do not get rid of it. I am for non-intervention until the contract is violated; then I am for intervention, and upon the ground of the violation of the contract. But this I dread. It looks like a will on the part of the Government to repudiate its contracts. Sir, if there is any influence in this country that is more demoralizing than another, it is the idea that has gone abroad that shows a weakening in the sense of obligation of contracts. If the Government would have the people be faithful to their contracts, let the Government be faithful to its own; but if the Government has made a bad contract, so long as the contractor complies with the terms of that contract, abide by it. It is better to submit to a wrong than to do a wrong; it is better to lose money than to exercise an ungranted power, a doubtful power. It is better to lose your interest than to keep up a perpetual congressional interference with these railroad companies and compel them to come here, subjected to the necessity by your action of pandering to cupidity to avert the oppression of power. You drive them into the courts and you are yourselves weakening the corporations by exhausting the fund in useless litigation which ought to be accumulated for the debt. You have already sent these companies to the courts before and the courts have decided against you. You are constantly proposing to send these companies to the courts with new expenses to be incurred, and yet you complain that the companies are likely to be insolvent. Sir, if this system of perpetual interference by Congress is to continue you will work their insolvency.

But, sir, I have said I do not dread these corporations as instruments of power to destroy this country, because there are a thousand agencies which can regulate, restrain, and control them; but there is a corporation we may all well dread. That corporation is the Federal Government. From the aggressions of this corporation there can be no safety, if it be allowed to go beyond the well-defined limits of its power. I dread nothing so much as the exercise of ungranted and doubtful powers by this Government. It is in my opinion the danger of dangers to the future of this country. Let us be sure we keep it always within its limits. If this great, ambitious, ever-growing corporation become oppressive, who shall check it? If it become wayward, who shall control it? If it become unjust, who shall trust it? As sentinels on the country's watch-tower, Senators, I beseech you watch and guard with sleepless dread that corporation which can make all property and rights, all States and people, and all liberty and hope its playthings in an hour, and its victims forever.

Mr. THURMAN. Mr. President, before the Senator from Tennessee [Mr. BAILEY] takes the floor, as I understand he will do, to speak on

this bill when it comes up to-morrow, I wish to make a few, a very few observations.

Mr. President, the Senator from Georgia [Mr. HILL] has indulged in some very sweeping denunciations of this bill, so sweeping that if they are true and well founded the first duty of the Senate is to disband its Judiciary Committee and appoint another. If the criticisms of the speech on the bill of that committee are true, the members of that committee who reported the bill are either idiots or villains. I do not think they are villains, and I do not think they are idiots. One of them was a distinguished judge in his own State for many years and a more distinguished judge for almost a generation in the Supreme Court of the United States. Three other members of that committee have been chief-justices of their States; and the other three were the leading lawyers of their States when they came to this body; and all of them have been placed and continued upon the Judiciary Committee of the Senate for these many long years. They ought to know the law, and if they have reported a bill which shocks the moral sense, which violates every principle of civilized government, which is in plain antagonism to the Constitution of the country, which shocks every idea of right and justice, and which imperils the safety of the people of the United States in their contracts and their business, it is the bounden duty of this Senate to dismiss that committee and appoint better men in their stead.

Mr. President, the time will come for some one of that committee to vindicate it against these accusations. The time will come to show that in the heat of speaking a Senator can make accusations against a committee that sound judgment and calm reason cannot approve. I think that time will come before this debate is at an end, and I think when it shall come it will be found by the decision of this Senate that the committee charged with the investigation of the law by this body does know something of law and that the Government of the United States is more powerful than any corporation that can exist in the Republic.

Mr. President, so much I feel impelled to say now, for I confess, with the kindest feelings toward the Senator who has just spoken with so much earnestness and so much ability, that there were things which dropped from his mouth that wound a man who has endeavored to discharge his duty honestly and does not think himself subject to such criticisms. But it was not for the purpose of speaking on that that I rose just now. I wish once more to say that in view of the adjournment of Congress, which it is hoped is to take place sometime, and not too far in the future, and of the other measures that must occupy the attention of Congress, and of the necessity that we are under of giving way from time to time to the appropriation bills which have a claim to precedence over all other business, I must ask the Senate, and I hope it will be its pleasure, to come to a vote on this measure on Wednesday next.

Mr. HILL. Mr. President, I am not aware that I have made the slightest accusation against the Judiciary Committee or any member of it. The second time after the Senator from Vermont [Mr. EDMUNDS] had made a slighting allusion, as I considered it, to some of my positions which I was taking from the books, I simply repelled it by an imputation that he was not perhaps wiser than the courts. That was simply a reply to the remark of the Senator from Vermont, as I understood him to intend it, nothing else. If there was anything else harsh in my speech, I am not aware of it. I made no accusation against that committee; but I have stated, and I have endeavored to

give my reasons upon authority, that in my judgment the Judiciary Committee have made a mistake and have claimed for Congress the exercise of a power which it does not possess. If that is to wound, if that is to be offensive, I trust that the grand Achilles of this body will start his javelins at more worthy game than myself who have said the same thing. It seems that this Judiciary Committee or some other Judiciary Committee have made decisions heretofore in relation to these very railroad companies and their rights under these charters, and the question who was right, the Judiciary Committee or the companies, has been referred to the Supreme Court, and the Supreme Court has sustained the companies. I was not aware that it was at all offensive for a member of the Senate to differ with the Judiciary Committee on a question of legislative power. Really I did not know that it was. If that is a crime, I have committed a crime. I have committed nothing more. Homer was said to have nodded, and I am not aware that Homer or any of his disciples ever took it as offensive, as an accusation against him, that it was said that he nodded. If the great Homer nodded, the Judiciary Committee now and then may nod.

I have respect for the Senator from Ohio, very great respect for that Senator; I have respect for the Judiciary Committee, very great respect for the Judiciary Committee, but it has made a mistake, in my judgment, from my stand-point. That is my honest conviction. Am I to follow my convictions, or has this Senate not only the power to violate contracts, but has its Judiciary Committee the right to command my homage and obedience against my convictions on a mere question of power? Personal respect is unbounded; official respect is unlimited; there is no office in the gift of the people that perhaps either one of the Judiciary Committee could not fill with honor to himself and benefit to the people. Nevertheless I do enjoy, and I expect to continue to enjoy, the proud privilege of acting and speaking in this body according to my own honest convictions of what are the powers of this Government.

Mr. THURMAN. If the Judiciary Committee has ever claimed infallibility, that claim never was heard by me. That the Judiciary Committee may have committed errors in its judgment, I am as free to admit as anybody can be to assert it. That every Senator has a right to criticise the judgment of that committee, I certainly have never denied. I would assert my own right to criticise the judgment of that committee; and what I assert for myself I accord to every one else. But it did seem to me that when it is said that a measure reported by that committee—I do not pretend to use the precise words of the Senator from Georgia, but I do convey his ideas—shocked the moral sense, was a violation of the principles of all civilized government, was a flagrant violation of the Constitution of the United States, and similar expressions, it was about time for that committee, if such was the opinion of the Senate, to be disbanded or for its members to resign.

But, Mr. President, I am not very sensitive about such things; I am not quick to take offense at all. I have the highest respect for the ability and integrity of my friend from Georgia, and also for his urbane manners and disposition. I do not think, therefore, that he intended the offense, and I make very great allowance for the heat——

Mr. HILL. You need make no allowance.

Mr. THURMAN. Very well then, I will not say anything about that. But I will say once more that I do not think a measure reported by this committee twice, first two years ago and again after its *per-*

*sonnel* had been in some measure changed, deserved quite such a characterization as it has received. But let that pass. I will not take offense at all; but I will endeavor, when the proper time comes, to answer by argument, and not by assertion, by reason, and not by prejudice, the positions taken by the Senator from Georgia. I only wish now once more to repeat that I hope the Senate will come to a vote next Wednesday.

Mr. HILL. It is proper for me to say that the language to which the Senator refers, but which he does not quote, was quoted by me from Mr. Madison. He said that the power claimed to impair the obligation of contracts was in violation of the social compact and the fundamental principles of sound legislation and the charter of natural rights. That was about as strong language as I used, and I used similar language from another authority, and I am sorry that I did not state at the time more specifically where the language came from. I said that in my judgment this power claimed had no precedent in law and no justification in authority, and I do not think the Senator himself can find that such a bill was ever before brought into such a legislative body as this is; but he claims it under a special reservation, and he and I differ upon the legal question. But the strongest language I used was quoted from others, and was not original; it was the product of some of the greatest minds this country has ever produced against the enormous pretensions of a legislative body to impair or destroy the validity of a contract after that contract has been made upon any pretext.

Mr. BAILEY. Mr. President——

Mr. WINDOM. I believe, by unanimous consent, the appropriation bill was to be taken up at the close of the speech of the Senator from Georgia.

The PRESIDING OFFICER, (Mr. MITCHELL in the chair.) That was the understanding.

Mr. WINDOM. I have no objection to the Senator from Tennessee taking the floor for to-morrow, if he desires.

The PRESIDING OFFICER. The Senator from Tennessee has the floor on the unfinished business to come up to-morrow. The Senate will now proceed to the consideration of the consular and diplomatic appropriation bill.

Mr. THURMAN. Does the Senator from Minnesota propose to go on with the consular bill now?

Mr. WINDOM. I understand it is before the Senate. I think if the Senate will give its attention to it for half an hour or three-quarters of an hour we can pass it.

Mr. THURMAN. Then the funding bill will be laid aside informally.

Mr. WINDOM. Informally.

The PRESIDING OFFICER. It will be laid aside informally, to be the unfinished business for to-morrow.

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MARCH 28, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An

act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, the pending question being on the amendment submitted by Mr. MATTHEWS.

Mr. BAILEY. Mr. President, the executive department of the United States and the officers representing the Union Pacific and Central Pacific Railroad Companies agree that the public interests as well as the prosperity, indeed the very solvency of these great corporations, demand that some action shall be taken by Congress to settle existing disputes and secure the repayment of the enormous loans made under the acts of 1862 and 1864 to aid in building the great continental railway. The President and the Secretary of the Treasury have repeatedly called the attention of Congress to the fact that the security held by the Government is not sufficient, and the accredited officers of the two companies, flushed with the success of their efforts to control legislation in the past or confiding in a supposed legal advantage, have reminded us in significant language that these great interests are exposed to the extremest danger and with apparently conscious power to impose their own terms, they have submitted a basis of settlement so exacting as to shock the moral sense of all who have considered it. In order that we may fully appreciate the danger that threatens the Government and people of the United States of losing the hundreds of millions of dollars advanced and to be advanced in building this great highway of commerce, I beg to call the attention of the Senate to an extract from a letter written by Mr. Dillon, president of the Union Pacific Railroad Company, on the 9th of February, 1875, addressed to Mr. Bristow, then Secretary of the Treasury, in which he says:

> The mortgage held by the Government, in its terms and by judicial decision of the United States circuit court, cannot be enforced until the maturity of the bonds, which is near the close of the present century.
>
> The bonds are accumulating an interest-account, also uncollectible until the principal is due. Principal and interest, when due, will amount to the very large aggregate of over $77,000,000—

And he is writing about the Union Pacific Railway indebtedness alone—

> though the actual amount advanced by the Government was only $27,236,512.
>
> For this very large amount the Government has only a second mortgage, and if it be allowed to accumulate, without any provision being made to meet it, the company will probably be utterly unable to pay it.
>
> At the same time, it is equally manifest that the Government will be unable to collect it, except upon the assumption that it will advance the money to discharge prior mortgages, and run the road on Government account—a policy which wise statesmanship could not advise.
>
> By standing still, therefore, the company has a load of debt accumulating for which no provision is made, and the Government is drifting farther and farther from the opportunity to secure a just return for its advances. To do nothing is to injure both the Government and the company, perhaps irretrievably to both.
>
> In this dilemma, I venture to make a proposition, which offers, on the part of the company, all it can possibly do, and secures to the Government a substantial return for its advances.

This intimation of probable insolvency of the Union Pacific Railroad Company, and consequent loss to the Government, is repeated in a communication addressed to the Senate Committee on the Judiciary on the 12th of November, 1877, by Mr. Dillon, and Mr. Huntington, the vice-president of the Central Pacific Railway, who joined

with him in saying as to both companies what I will ask the indulgence of the Senate to listen to:

> Nearly three years since the officers of the Union Pacific and Central Pacific Railroad Companies called the attention of the Secretary of the Treasury to the fact that contrary to the general expectation at the inception of the enterprise—

And I ask attention to this phraseology—

> a balance of accounts in his ledger was accumulating against them which, unless some remedial legislation was soon had, would amount, by the time it became due and payable, to a sum which it might be embarrassing to the companies to pay simultaneously with their first-mortgage debt, and greater than the value of the subordinated lien of the Government on the properties themselves.

But as if this deliberate declaration was not sufficient to warn the Senate of the danger that threatens, Mr. Huntington, who appeared before the Judiciary Committee, takes occasion to say in an address delivered to that committee:

> By the time—

Speaking of the Government debt and the first-mortgage debt, equal in amount to the principal of the Government bonds issued to these railroad companies—

> By the time both mature and become payable it is not at all likely the property will be worth their aggregate sum, and if the shrinking and settling of prices should continue further it may happen that it will not suffice to pay more than the first mortgages.

These carefully considered statements are accompanied by equally well-considered declarations to the effect that by the terms of the acts of 1862 and 1864 the officers of the two companies have the moral as well as the legal right to distribute the earnings of the two roads to the stockholders, and although this course will certainly lead to the insolvency of the corporations, as they agree, they very plainly threaten that unless the Government will yield to their terms they will manage affairs solely with regard to the interests of the corporators and without regard to the just claims of creditors.

In order to give greater force to these extraordinary claims they have submitted to the Senate of the United States and also to its Committee on the Judiciary a proposal for a settlement in the shape of a bill by which each of the companies offers to reconvey to the Government six million acres of land derived from the Government bounty for the sum of $1.25 per acre, payable immediately, and making in all $15,000,000. This money is to be carried into a sinking fund and the interest to be compounded at 6 per cent. semi-annually until the 1st of October, 1905. They propose that to the credit of the sinking fund shall be carried any sum now due to them from the Government, and if the amount shall not equal $1,000,000 to each company it shall be made equal to that sum. They propose further that each company, in proportion to its deficiency, shall pay into the Treasury, to the credit of this fund, on the first days of April and October in each year, commencing the 1st of April, 1878, and ending the 1st of October, 1905, such sum of money as shall be ascertained by the Secretary of the Treasury to be sufficient, with the interest thereon compounded semi-annually, when added to the other sums to the credit of the sinking fund, to pay off and extinguish the bonds with 6 per cent. interest thereon from their respective dates to the 1st of October, 1905.

That we may properly understand the nature of this offer, and the advantage to the corporations and loss to the Government to follow its acceptance, it becomes necessary briefly to refer to the contract between the parties embodied in the acts of 1862 and 1864.

By the terms of this contract the Government loaned to these companies its bonds to the amount of $55,000,000, payable thirty years

after date, and bearing interest at the rate of 6 per cent. per annum. These bonds were declared to be a mortgage lien on all their property, but the lien was made subordinate to another lien of $55,000,000 bonds issued by the companies themselves. On their part the corporations agreed that they would pay annually into the Treasury 5 per cent. of their net earnings, and that the Government should retain one-half the sums due from it from year to year for services rendered, and that those sums when received should be applied to the extinguishment of the debt. They further agreed to pay the principal of the bonds at maturity and all interest thereon, less the sum of 5 per cent. net earnings and one-half the sums retained for services to the Government as aforesaid.

It is agreed on all sides that some of these bonds will become due before and others after the 1st day of January, 1898, but that the mean time of payment will be on that day, and it is shown by the Judiciary Committee report that 5 per cent. of the net earnings of the two roads and one-half the service rendered the Government in the last two years have averaged the sum of $1,166,000 per annum. Nor is there any reasonable ground upon which to base a belief that the sum will be less in the future. Now, a very simple calculation will show that the $15,000,000 demanded as the price of the twelve million acres of land and to be carried to the sinking fund, placed at interest at 6 per cent. per annum, with annual rests as they require, will swell by the 1st of October, 1905, to a sum exceeding $75,000,000, and the interest on the sum of $1,166,000 per annum, being the 5 per cent. of net profits and one-half the transportation account of the Government, will by the same time equal the sum of $48,000,000, these two sums aggregating more than $100,000,000.

But not content with these enormous gains the railroad companies demand that the time of payment of the debt shall be extended from the 1st of January, 1898, to the 1st of October, 1905, a period of seven years and nine months, and their bill directs that they shall pay simply interest only on the bonds of the United States from their respective dates of maturity to the day of settlement. The Supreme Court of the United States has decided that when these bonds shall become due the principal and interest become a debt against the corporations which they are bound in law as well as in morals then to pay. The principal and interest on the 1st of January, 1898, after deducting the payments heretofore made, will amount to the sum of $142,000,000; but according to the terms of the bill, although the principal will bear interest, $86,000,000 of interest which at that time will also be a debt and should bear interest will be barren seven years and nine months although all payments to the fund made by the corporations will be at compound interest for that length of time. The loss to the Government on this score will amount to a sum exceeding $49,000,000.

Now, let us for a moment go back and see what sacrifices these gentlemen who in their addresses to the Senate Judiciary Committee say the real question is a business one and that they speak from a business stand-point demand as a condition of settlement. They require the Government to pay $15,000,000 for twelve million acres of land, a gift from the Government, and that this sum shall be placed at interest while they pay none until it shall swell to the sum of $75,000,000. Next, they demand that their annual payments of $1,166,000 shall be placed at interest, and that compounded, until the interest shall reach $48,000,000. But, not satisfied with these exactions, they demand that for seven years and nine months the Government shall receive no in-

terest on $86,000,000, making a further loss of $49,000,000, or a total of $172,000,000—exceeding the entire debt, principal and interest, that will be due from them to the Government at that time.

And this, Mr. President and Senators, is the "business proposition" which they have submitted to the Senate of the United States, the most august deliberative assembly upon earth. The extravagant claims of these gentlemen have met with no encouragement here; but, in view of the apprehension of loss to the Government and to provide methods of securing payment of the constantly increasing debt, two measures have been presented. One of these measures is the bill under consideration, presented by the Judiciary Committee, and the other is the bill presented by the Senator from Ohio, [Mr. MATTHEWS,] from the Railroad Committee. The two measures differ not only in methods but also in the fundamental principles upon which they are based.

The bill presented by the Judiciary Committee asserts the right and power of Congress to regulate the business of these corporations created by it and to compel them to render obedience to law. The bill presented by the Senator from Ohio [Mr. MATTHEWS] assumes that Congress by contract has yielded its powers of legislation and that any settlement must rest upon a consent of the parties. If the bill presented by the Senator from Ohio [Mr. MATTHEWS] will secure to the Government the sum of money to become due and shall be accepted by the corporations, the question whether we shall adopt the one bill or the other is of little importance.

Let us, then, examine the particulars of the two bills and ascertain in what essential points they differ. The acts of 1862 and 1864 granted a charter of incorporation to the stockholders of the Union Pacific Railroad Company and, recognizing the Central Pacific Company, a corporation chartered by the Legislature of the State of California, authorized the two companies to construct a railroad from the one hundredth meridian west of Greenwich to the Sacramento River, and, as we have seen, donated a large body of land and loaned its bonds to them for more than $50,000,000. We have seen that these bonds, with the interest thereon, were declared to be a lien on the property of the companies, but subordinated to another lien of equal amount. The two companies have made enormous earnings; they have paid large dividends to the stockholders; but, notwithstanding their debt to the Government is constantly increasing and by the time the bonds shall mature will equal $118,000,000 or $120,000,000 after deducting all payments made or hereafter to be made under the existing contract, they refuse to create a sinking fund to meet this obligation and their officers openly confess the belief that this course will end in bankruptcy.

Now, the bill reported by the Railroad Committee directs that each of these companies shall pay into the Treasury the sum of $1,000,000 annually, and these sums, together with $1,000,000 claimed to have been improperly retained from each, shall constitute a sinking fund, and be placed at interest with semi-annual rests until the 18th day of October, 1900, when the accumulated sum shall be deducted from the sum of the principal of the bonds with interest to the same time, and the remainder thus ascertained to be due shall be divided into fifty payments, one of which with interest thereon shall be paid each half year until the debt shall be extinguished.

It is to be noted, first, that the companies are released from the payment of 5 per cent. of net profits and one-half the transportation account; second, that the time of payment is extended from the 1st

of January, 1898, to the 1st of October, 1900, or a period of two years and nine months; and, third, that the Government is required to account for interest on the $1,000,000 claimed now to be due. By the first change the Government, instead of receiving the 5 per cent. net earnings and one-half the transportation account, in payment of so much of the debt, receives a smaller sum and is required to pay it into the sinking fund, where it is put at interest compounded semi-annually.

The Judiciary Committee estimates that this payment should be $1,166,000 per year, and the interest on this sum calculated with annual (not semi-annual) rests until the year 1900 will be more than $30,000,000.

The interest that will have been paid on the 1st of January, 1898, by the Government in excess of all repayments by the corporations will not be less than $86,900,000, and according to the principles settled by the Supreme Court of the United States in the case in 1 Otto will bear interest from that day.

This interest for two years and nine months, for which time the payment is postponed, by the provisions of the Railroad Committee bill, will be $15,180,000, which added to the $30,000,000 above, makes a total exceeding $45,000,000 to be relinquished by the Government.

But assuming that the Judiciary Committee is mistaken and has estimated the payment too high, and that it should be one million per annum instead of $1,166,000, the gift to these companies would still amount to a sum exceeding $41,000,000.

The Government has already been too bountiful in its favors to these corporations, and it can afford to make no other such gifts to them as have been made in the past. I take it that surely the representatives of the people of the United States, those who are here acting to-day as their trustees, charged with the disbursement of moneys taken from their earnings and with the duty of preserving and protecting their rights and interests, are not prepared, in view of the present condition of these corporations, of their enormous wealth present and prospective, of the fact that they are able to declare and have for two years each declared dividends and paid to their corporators from 8 to 10 per cent. per annum upon the nominal amount of stock, a fictitious stock as I believe and as is believed by the country—surely then, I say, here representing the people, the Senate is not prepared to enact this bill into a law.

Then the only question remaining is, shall Congress adopt the Judiciary Committee bill? It proposes to compel each of these corporations to pay into a sinking fund a sum which, including the 5 per cent. of net earnings and one-half the transportation account, will be $2,000,000 for each year, but the payments to be made in all shall not exceed 25 per cent. of their net earnings. The committee proposes this legislation for the reason that the two companies, after paying the operating expenses and all interest on their bonded debt, have a net income exceeding $13,000,000 per annum and have been paying dividends of 8, 9, and 10 per cent. upon a stock account which it is believed does not represent capital actually paid down. With enormous incomes, they refuse to make any provision for the payment of the Government bonds when they shall become due. At that time the mortgage debt of the two companies and having a prior lien will be $55,087,000; the Government debt, principal $55,000,000, and the interest, if no part of the 5 per cent. or one-half transportation account shall be paid, will amount to $86,000,000 more, making a total of $197,000,000, which at 6 per cent. interest will require

payments each year to the amount of $11,824,000. The directors themselves say the revenues of the companies will not be sufficient to pay these sums and the stock will be entirely lost. As a consequence the mortgage will have to be foreclosed, the property sold and passed from these corporations to strangers, not in privity with the Government nor intrusted with the great work and duty of managing and controlling this important highway, to which the country has attached in the past, attaches to-day, and will in the future attach so much importance.

It is objected, however, that Congress has not the right to enact the Judiciary Committee bill; that it is powerless to defeat the meditated fraud, and must quietly permit its complete consummation. It is said by some that by the provisions of this bill an attempt is made to make a new contract between the Government and the corporations. They affirm that by the terms of the acts of 1862 and 1864 the debt of the Government will not become due until 1898, and that the bill in substance and effect makes it payable to-day. Others maintain that by the terms of these acts or by implication of law the corporations have a right to distribute the earnings of the road without regard to the claims of creditors; that this is a vested right which cannot be taken from them by Congress, either in virtue of its powers as a legislative body or by force of the reservation of authority "to alter, amend, or repeal" the acts.

If these affirmations be true I will agree that there is no power in Congress, there is no power anywhere that will authorize or justify or excuse the legislation that is proposed. But what does this bill propose to do? I do not see anywhere, in any clause, a change in the terms of the contract. I find only that, warned by the declaration that the officers of the companies have made of the danger, indeed of the almost certain insolvency to follow the unwise course of distributing from year to year all the earnings of the companies, Congress simply requires not that they shall pay any part of the debt, but shall establish a sinking fund, into which a part of the earnings shall go. The distinction between the payment of a debt or a portion of a debt and establishing a sinking fund to provide for its future payment is not a mere verbal distinction. It has been recognized by every government and by every people. In requiring this, Congress only requires these corporations to do that which our own Government is doing to-day; only that which every corporation, largely in debt, whose affairs are managed with any prudence and skill, has adopted, not alone with a view to save it from insolvency but to strengthen its credit and increase its usefulness. The Treasury of the United States has been selected as the place of deposit simply because it secures perfect security. The Treasurer of the United States has been designated as the person to manage the fund because of his relation to the Department.

The Judiciary bill does not change the terms of the contract, and the only question, as it seems to me, that is presented for our consideration is whether Congress, having created one of these corporations and granted to the other the right to certain franchises to be used within the Territories of the United States, has the power to legislate for and control them in the use of these franchises and prescribe rules and regulations for their government to the same extent that the Legislature of a State possesses over corporations of its creation or the people subject to its jurisdiction.

It cannot be said that Congress has by contract relinquished its right to exercise its original and inherent power to legislate upon any

matter connected with these corporations. The acts of 1862 and 1864 have been subjected to the most searching examination, and have been analyzed in all their parts, section by section and clause by clause; yet no person has been able to find, either in their spirit and meaning as a whole or in any of their separate parts, aught that indicates even by implication a purpose to yield the sovereign power to regulate, govern, and in all things control their affairs; but to the contrary, and as if to guard against the very pretension made here to-day, we do find an express reservation of power to Congress, at any time and in its discretion, to "alter, amend, or repeal" the acts in question. The force of these words and their effect have been discussed by other Senators and will again be referred to by those who will follow me in this debate, and I will not detain the Senate with an argument to prove that the reserved power is sufficient without more to authorize the legislation proposed. And yet I would not be true to my own convictions if I were not to say that the power to "repeal" these acts, and, by consequence of their repeal, to strip these corporations of all their franchises, and then compel the marshaling of all their property and assets and the payment of all their debts, is too clear for argument. And it is equally clear to my mind that the power to "alter and amend" does necessarily refer to the exercise of the franchises and privileges granted, and confers upon Congress the right, in its discretion, to interpose, and, as settled in the case of Miller *vs.* The State, 15 Wallace, 498, give directions "that will carry into effect the original purpose of the grant or secure the due administration of its (the corporation's) affairs, so as to protect the rights of the stockholders and of creditors and the proper disposition of its assets."

Now, for what purpose were these corporations created and clothed with the important franchises enumerated in the acts in question? Why did Congress with such lavish bounty bestow lands greater in extent than principalities and advance its credit upon terms without precedent in the history of this or any other Government? The answer is given in the act of 1864. In was done "for the purpose of aiding in the construction of said railroad and telegraph line and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon." This was the view that dominated the minds of the Representatives and Senators at that time. The building of the road was regarded as a necessary work. The necessity of keeping the road at all times in condition to serve the Government is recognized in every part of the act. The grants were made "on condition that the corporations would pay the bonds at maturity and keep said railroad and telegraph lines in repair and use, and at all times transmit dispatches over said telegraph line and transport mails, troops, and munitions of war supplies and public stores for the Government whenever required to do so by any Department thereof." This was a great national work, of the highest importance to the sovereign power, promoted by it upon political and public grounds. Government was at that time engaged in war with the confederacy; the commerce of the country on the ocean and open seas was threatened by confederate cruisers; almost every coaling station reaching in the direction of the Isthmus of Panama was under the control of a foreign power then regarded as unfriendly to the United States. Apprehensions were felt that the great distances separating the States on the Pacific slope from the Eastern States, coupled with the difficulty, delays, and uncertainty of communication, might bring about another division of States. Inspired by these

considerations and impelled by a sense of public duty, and not for the purpose of aiding a mere commercial enterprise, Congress inaugurated the great work. I cannot so well express the motives that controlled its action as it has been done by the Supreme Court of the United States:

> Many of the provisions in the original act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which existed when it was passed. The war of the rebellion was in progress, and owing to complications with England the country had become alarmed for the safety of our Pacific possessions. The loss of them was feared in case those complications should result in an open rupture; but, even if this fear were groundless, it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every government owes to its citizens. It is true the threatened danger was happily averted; but wisdom pointed out the necessity of making suitable provision for the future. This could be done in no better way than by the construction of a railroad across the continent. Such a road would bind together the widely separated parts of our common country and furnish a cheap and expeditious mode for the transportation of troops and supplies. If it did nothing more than afford the required protection to the Pacific States, it was felt that the Government, in the performance of an imperative duty, could not justly withhold the aid necessary to build it.—*The United States vs. The Union Pacific Railroad Company*, 1 *Otto*, 79, 80.

This was a great national enterprise. It was one that was worthy of the great Government of the United States. It was a work necessary to be done. It is a work necessary to be preserved. The Government of the United States has made a contract with these corporations by which they have agreed, and, so far as the idea of personality can attach to corporations, by which they have personally agreed, that they will maintain and keep this road in order and sufficient at all times to render distinct services to the United States that are pointed out in the charter of their existence.

This railroad is a great agency and the corporations are agents of Government. They occupy that relation to the Government, not because they are subjects, but because of the contract they made. It has become, then, the high and solemn duty, it is upon their part a great public trust, one which they cannot neglect without a violation of their most solemn agreement and obligation, at all times to keep themselves in a condition that will enable them to render to the Government the services which they have contracted to render, and to protect, preserve, and keep for the use of the people of the United States this great highway which the Government has made such great sacrifices to build. I say that here is sufficient grounds for the exercise of the power that Congress now claims in regard to these corporations. Here is a sufficient authority to justify, indeed to demand of the Congress of the United States that this bill shall be enacted into a law. I have heard the contrary opinion expressed by no Senator, and I would yield my own opinion to the larger experience, the greater learning, and the greater ability of the eminent lawyers who sit with me in this Chamber, but I believe that the distinct purpose, openly avowed to the officers of the United States, and the committees of this body, by the managment of these corporations, to reduce them to a state of insolvency, and thus render the corporations incapable of keeping their solemn engagements and performing the great public trust they assumed, would authorize the courts of the United States to entertain a bill *quia timet* to prevent the threatened violation of trust; but, however that may be, Congress has now the right and power, and it has became a duty by law, to guard against the danger, and it may order into a sinking fund a sufficient amount of their annual earnings to secure the payment of the principle and interest of the debt these companies owe the Government.

Mr. HILL. May I ask the Senator a question? If there has been a violation of the trust, and that violation gives us a right to go to the courts—and I concur with the Senator that that is the case—is it not better that we should go to the courts? Why make a case here and turn that over to the courts? Why not turn the case we have got over to the courts, if that is a good case, rather than attempt to make another case and turn that over to the courts?

Mr. BAILEY. I have expressed my opinion; I may be in error——

Mr. HILL. I say to the Senator that I concur with him fully that if there is a violation of the trust and danger of an annihilation of the road, the remedy is ample before the courts. I agree that remedy would extend to taking the road out of the hands of the corporation. I think the Senator is right in that, that if a violation of the trust exists, or such a condition of things as amounts to a violation of the trust, you have a right to go to the courts.

Mr. BAILEY. I understand the Senator, then, to agree with me that, if I have correctly stated the facts, my conclusion in regard to the rights of these parties on the one hand and their obligation on the other are correct, and that the Government of the United States has the right to-day to appeal to its courts for the purpose of protecting its interests and compelling the performance of this trust?

Mr. HILL. I have said this, that if the Senator is right in his statement that the action of these parties amounts to a violation of the trust, the United States has ample remedy in the courts of justice.

Mr. BAILEY. Then certainly the Senator and I will not differ very widely; for, if we are agreed about that, certainly as doubt exists in so many minds, and instructed as both of us have been by our experience as lawyers in construing statutes and in devising remedies, he will join with me in improving the law, and make the remedy more perfect.

Now, Mr. President, I agree with very much that was said yesterday by the Senator from Georgia in the very able speech to which we all listened with so much pleasure. These acts of 1862 and 1864 are naturally divisible into two parts: First, those portions of the acts which create one corporation and give within the Territories of the United States franchises to the other, which give to both their rights, their privileges, their immunities, their powers. Another division is that portion which proposes after the corporations are created to make a contract with them. I agree with the Senator that a corporation can be created and franchises granted only by the sovereign, and that in contracting with the creatures it has called into being for a loan of money or bonds the sovereign occupies no higher position and has no rights other than will be awarded to a citizen. I agree with him further that the reserved right to alter, amend, or repeal these acts does not necessarily give to Congress the power at all times and without regard to change of circumstances to change the contract made under the second division to which I have referred.

It seems to me that when this law was enacted the corporators had a right to organize their companies but were under no obligation to accept the bounty of the Government. The two propositions were essentially distinct. Organized, they might have undertaken with their own capital or capital borrowed elsewhere to build this great line of railway, but the proposition having been submitted to them by the Government of the United States for a loan of $55,000,000 of bonds they could accept it or not as they might deem expedient or in accordance with their interests. If accepted, I agree with the Senator from Ohio [Mr. THURMAN] that Congress could the next day have with-

drawn the proposition or at any time before the work was begun upon the line of railway; but whenever a single section of the work was completed and the bonds were delivered that were due from the Government upon that section, to that extent there was an executed contract between the two parties and that contract, and the obligations and rights of the parties in respect to it rested secure under the sanction of the good faith of the Government and the intelligence and civilization of the age. I say nothing about the power of Congress in the absence of a constitutional inhibition. That question is not before us; but without regard to that, this contract rested under the sanction and protection of a wise policy, of a just policy, and is, as it seems to me, (I say it respectfully to those who differ from me,) under the protection of the consciences of the people of the United States. I do not think the contract could be disturbed, but as to the remainder of the work not yet done the offer might have been withdrawn, and not until the work was finished was the contract executed in all its parts upon the part of the corporations or beyond the control as to the unfinished parts of Congress. When finished the rights of the corporations and of the Government of the United States became fixed and established; neither could disturb it. Nor, in my opinion, does the power that is reserved to alter, amend, or repeal the act give the power to Congress to interpolate a new term into the contract which had been executed. A contract is an agreement between two or more persons in regard to some particular thing. The very definition implies that there shall be a consenting of minds, that there shall be an agreeing of minds, that there shall be two parties at least to the agreement. But in the estimation of the Senator from Georgia [Mr. HILL] this bill proposes to interpolate a new term into the contract. If I believed this to be so I would vote against the bill. I would vote against it because I do not believe that Congress has the power, acting for the Government and people of the United States and against the will of a person who has contracted with it, under such a reservation as this, to make a new term in the contract. But this view interposes no obstacle to my hearty support of the bill which has been presented by the Judiciary Committee. I hold that the power of Congress in respect to matters that are properly subject to its legislative control is commensurate with the wants and the interests of the people of the United States. I hold that within its constitutional limit the Congress has the same power that a Legislature has to change the law from time to time in order to meet the varying wants and exigencies that may be developed in society.

These corporations, resting in fancied security under the protection of the law, which, as it now stands, gives to them power to distribute all their earnings to stockholders and to disregard the just claims of creditors, assert that they have a vested right in the law as it is, and that no change can be made that will interfere with their power to distribute the earnings so unwisely and so unjustly.

It is generally understood among statesmen and lawyers and laymen that the legislature may, from time to time, change the law to meet the necessities of each generation and of each state of society. The Legislature of Massachusetts or of Tennessee, looking to surrounding circumstances and conditions, will amend their laws to suit the wants of their own people. We are an English-speaking race, and of course a practical race. Our laws are practical in effect, and are made from day to day and from year to year to meet the exigencies that arise in the actual experience of our people. As a practical people we have established governments whose power reaches to

every relation. It interposes in our domestic life and enters into the very privacy of our homes; it regulates the relations of husband and wife, of father and child, of neighbor and neighbor; it prescribes the laws of marriage and divorce; it directs the disposition of our estates after death, regulates the terms and conditions on which wills may be made, and points out the legal successors to lands and houses and goods; it controls the business affairs of men and makes laws for their government; it commands their services in peace and in war, and compels service in offices of public trust or in deadly battle.

There is no limit to this power other than that imposed by the people themselves by constitutional barriers. And yet it is said here to-day that great and all-reaching as is this power, however potent to regulate the most delicate and important relations of life or to interfere with the business affairs of mankind, however absolutely it may control our property or command the services of the citizen, it is robbed of all its greatness in the presence of a creation of its own and cannot forbid it to consummate a meditated wrong.

I cannot bring myself to believe that these corporations have any other or greater privileges and immunities than belong to citizens of the United States, unless they have been conferred by the Government; and where in their charters is to be found any warrant that the Government will not undertake to regulate and control their business affairs as it regulates and controls the affairs of the citizen? In my State and the State that is represented by the honorable Senator from Georgia we have a law providing that, if a debtor in anticipation of the time of payment of a debt is making a fradulent conveyance of his property with a view to evade the payment of that debt, the creditor may sue out an attachment and impound the property and hold it under the jurisdiction of the courts until the debt shall become due. This is statutory law; but has anybody ever questioned the power of the Legislature to enact such?

Mr. HILL. I will say to my friend that, so far from questioning it, I concede it fully. I admit it is the law now that if these companies, or either of them, shall attempt to make a fraudulent conveyance of this property, or shall by their own act impair the value of this property, or shall in any way by their own act seek to destroy the security of the United States upon this property, you have an ample right to go into court and restrain them, and a perfect right to take the property out of their possession to that extent.

Mr. BAILEY. I suppose, then, the Senator from Georgia would rest the power of Congress to legislate on this subject upon the fact that there was or was not a fraud in the conduct of these parties?

Mr. HILL. I rest it upon the fact that there was or was not a breach of the trust. I do not rest the power of Congress to legislate; I rest the power of the courts to interfere; and I say your remedy is ample. I say Congress can provide remedies that the courts must administer.

Mr. BAILEY. This debt is not due——

Mr. HILL. Whether these companies have been guilty of fraud or guilty of a breach of trust is a judicial question.

Mr. BAILEY. That is not now the subject of inquiry. I am speaking now of the power of Congress as a legislative body to prescribe laws to control the conduct and business affairs of those who are subject to its power as a legislative body. I illustrated the idea that I was attempting to advance by referring to a species of legislation that is very familiar in the gentleman's State and in my own. He contends that Congress has no power to enact into a law the bill that

is presented by the Judiciary Committee, and what does that do? It simply undertakes to regulate and control the action of a person who is subject to the legislative will of Congress, and not more so nor less so than the citizen of Georgia who undertakes to make a fraudulent conveyance of his property. The gentleman spoke yesterday of default, and I suppose the idea is in his mind to-day that there can be no action without a default. The citizen of Georgia who is or will become indebted in the future is not in default, although he actually conveys his property, until the debt actually becomes due.

Mr. HILL. I do not agree with the Senator. There may be several kinds of default. There may be a default in payment, which can only occur after the debt becomes due; but that is a worse default which by fraud seeks to destroy the debt before it becomes due. In the first place, where the default is one of payment and occurs after the debt becomes due, the remedy is in a court of law. If it occurs by fraud in advance of the debt becoming due and endangers the existence of the debt, then the remedy is in a court of equity.

Mr. BAILEY. The test of it then is the danger of losing the debt, as I understand.

Mr. HILL. If that danger is caused by the act of the party. If that danger is the mere result of the natural course of events, a natural depreciation of property, there is no remedy, for no debtor is responsible for the act of God or the king's enemies or the natural course of events. The debtor is responsible for his own act, and if by his own act he brings the property into disrepute, destroying the value of the property, or wasting the property, or seeking to make a fraudulent conveyance of the property, then a court of equity will intervene and restrain him. But the simple fact that the debt is not due, the simple fact that the property is insufficient to pay the debt, the simple fact that the debtor is insolvent, are all misfortunes; they are not crimes; they are not frauds.

Mr. BAILEY. Or, the gentleman should have added, if he is dividing out his estate, or if a corporation is dividing out its assets among its stockholders without regard to its obligations to pay its debts, then there is a default.

Mr. HILL. I concede that if the stockholders are dividing out that which is included in the mortgage, that which is covered by the lien, it is a fraud.

Mr. BAILEY. Mr. President, the rights of creditors do not rest upon any idea of forfeiture of a mortgage. In the case supposed, provided for by the law of Georgia, there is no mortgage, but the Legislature interposes. Why does it interpose? The debtor is not under a legal obligation to pay the debt *eo instanti*, at that moment. No more is this corporation under any obligation, moral or legal, to pay to-day its prospective debt to the United States Government; but the debt is imperiled by reason of the action or conduct of the debtor, and the Legislature interposes and the legislative power changes the law and gives the creditor a new remedy. For what purpose? To protect the creditor, to compel the performance of the contract, to require the debtor to remain or to suffer his property to remain in a condition where it will be subjected to the payment of the debt; and when the gentleman concedes that that sort of legislation is constitutional and valid and right, he concedes all that we contend for here.

Mr. BECK. Will the Senator from Tennessee permit me to say that the legislation is applied to debts that existed before that legislation was had, and as to which there was no such right of interference, just as well as to those debts which were incurred afterward?

Mr. HILL. And I will say to the Senator from Tennessee further that all the legislation to which he refers in his State and mine does not interfere with the contract; it does not require the debtor to pay one cent before the debt becomes due. It simply says the property shall be held; that the debtor shall not fraudulently convey it; that he shall hold it in *statu quo* until the debt becomes due.

Mr. BAILEY. We propose nothing more than that here. There is no change of this contract at all. I say that it is impossible for the Senator from Georgia, with all his ingennity, with all his ability, with all his mastery of the principles as well as of the technics of the law, to show in what particular or that in any particular this bill in requiring the creation of a sinking fund changes the contract between these parties or expedites one day the payment of the debt that will become due in the future from these corporations to the Government of the United States.

Mr. HILL. The contract requires the corporations to pay one-half of the compensation for Government transportation. This bill requires them to expend the whole of it on the debt.

Mr. BAILEY. Not at all.

Mr. HILL. You require them to pay it into a sinking fund, which sinking fund is placed in the Treasury of the creditor. You take the money away from the debtor. The law to which the Senator refers in Tennessee and Georgia does not take a dollar from the debtor before the debt is due.

Mr. BAILEY. It takes his property from him.

Mr. HILL. It does not take his property from him; it only holds it.

Mr. BAILEY. What difference does it make whether this sinking fund is in the Treasury of the United States or in a bank in New York? The Treasury is adopted for that purpose, not alone because it is a Government agency, but because it is supposed to be the safest to all parties. If a dollar shall be lost by reason of the defalcation of officers of the United States, the Government will, not in law but in honor, be bound to make that loss good. For that reason, because it is safer and more convenient, the Treasury of the United States is selected as the custodian of this fund.

Mr. HILL. How does it lessen the burdens you impose by this bill upon the debtor to pay this additional half of the transportation account simply because the creditor takes the money and holds it but does not pay it out to the creditor until the debt becomes due?

Mr. BAILEY. It is no burden to a man to pay a debt.

Mr. HILL. It is a burden to pay a debt before it becomes due.

Mr. BAILEY. The whole argument proceeds upon the assumption that a creditor has no rights in respect to the earnings of his debtor, upon the assumption that the debtor if he can under some legal technicality escape the payment of a debt may legally and properly do so. We take nothing from this company that it is not under the highest moral obligation to devote to the payment of the debt, and we simply propose to convert that moral obligation into a legal obligation. The case is not in one particular different, in the view in which I am now considering this subject, from the case that was supposed a while ago of a debtor in the State of Georgia who proposed to transfer, or attempted to transfer, his property for the purpose of avoiding the payment of a debt. The Government, or rather the law, seizes the property in that case—the law enacted by the Legislature, that undertakes to regulate and control the relations of man with his fellow-man in their business transactions. The law seizes it and dedicates it to the payment of a debt, or rather, it impounds it

and holds it until the debt shall become due. His property is taken from him just as we propose to take money from the vaults of these great corporations and place it in the Treasury of the United States as security for the payment of debts payable *in futuro* and which the officers of the company have declared that they cannot and will not pay.

But, Mr. President, I believe it is the law in the State of Georgia, as it is the law to-day in Tennessee and in most of the States of the Union, that if a debtor offers to remove himself and his property from the State where the debt was created, in advance of the time for payment, that property may be seized, it may be impounded, and may be held until the debt shall have become due. Upon what principle does that legislation rest? Why is not that unconstitutional? Why does not that work a change in the contract between the parties?

Mr. HILL. That goes exactly upon this definite principle, that the debtor after he has made the debt is endangering its collection by his own act, not by the act of another, and he is changing the jurisdiction of the debt; he is traveling beyond the jurisdiction in which he created his debt.

Mr. BAILEY. Then the power of the Legislature rests not upon the fact that it is a Legislature. It is not an inherent power; it is not a power derived from the people; but the power is derived from the act of the absconding or fraudulent debtor.

Mr. HILL. The necessity for the legislation is derived from that act.

Mr. BAILEY. The necessity for the legislation? Who shall judge of its necessity? If the Congress has the right to enact laws on the subject, who can judge or inquire into their wisdom or necessity?

Mr. HILL. It would be unconstitutional for a Legislature to pass an act authorizing the property of a debtor to be seized before the debt is due, if he is not changing his situation, if he is not removing; and the legislation itself in this bill only seeks to have vitality upon the ground that he is not changing his jurisdiction.

Mr. EDMUNDS. Suppose he were wasting it?

Mr. HILL. Certainly; if he were wasting it, that would be the same thing.

Mr. EDMUNDS. Now what is the difference as to a corporation paying money to its stockholders, whence it never can come back, which it is confessedly necessary to get to pay its debts?

Mr. HILL. Ah, you have got no lien upon that income, no lien upon the earnings. You have a lien upon the *corpus*, and you would have a right, a perfect right, to proceed against that in such a case.

Mr. EDMUNDS. If I do not interrupt the Senator from Tennessee, may I ask the Senator from Georgia if every creditor of the corporation has not a lien upon every dollar of its income, by the nature of a corporate lien?

Mr. HILL. After the debt becomes due.

Mr. EDMUNDS. Have you not before the debt becomes due?

Mr. HILL. Not unless he is endangering the payment of the debt by his own act.

Mr. EDMUNDS. That is the very question, whether he is not endangering it by dividends to the stockholders when confessedly if it goes on there will be nothing to pay the creditors with.

Mr. HILL. Confessedly, the creditor has elected his own security, confessedly the creditor has dedicated the *corpus* of the road to pay the debt; and confessedly the debtor is doing nothing to endanger that security.

Mr. EDMUNDS. But the Senator from Georgia carefully leaves

out the proposition that I put to him, that upon the universal principles of law applied to corporations, no matter whether you have a mortgage security or not, every dollar of the assets and income of a corporation is a trust-fund for the payment of its creditors first, and for division among its stockholders afterward. Therefore, if a corporation, without regard to whether there is a mortgage lien or not, divides up its earnings among its stockholders to the danger of its creditors, it is violating the law of its existence.

Mr. HILL. I do say emphatically that no creditor of the road has any right as a legislature to pass acts and to administer a law to prevent the debtor from using the income of his property before the debt becomes due. He has a right to use the rents, issues, and profits of the property, and no law ever arrested it or can ever arrest it unless by so doing he is violating a contract. If he has included the rents, issues, and profits of the property in a mortgage, then he is bound. If he has not, then there is not any court on earth that can impound the income of a man's property in advance of the debt being due; nor was it ever done. I say broadly it never was done. It cannot be done in the nature of things, because when a man dedicates the *corpus* of the property to the payment of the debt, to that the creditor must look. The creditor has elected his security; the creditor has dedicated his security; he has fixed the debt on that security and he must rely on it. There is no lien in favor of an ordinary creditor against a debtor—none in the world. But I beg pardon of the Senator from Tennessee for having interrupted him.

Mr. BAILEY. Although that may never have been done by a court, yet such is the temper, and such are the convictions of the American Congress to-day, that it cannot hereafter be brought as a reproach against the courts of the United States that they will not entertain jurisdiction where a debtor has publicly and solemnly announced to his creditors that his purpose is so to administer his affairs as not only to bring a debt to mature at a future day in peril, but to bring it to absolute, positive, and certain loss——

Mr. HILL. Of course the unauthorized announcement of an officer amounts to nothing, but if there is any announcement by the corporation that they intend to bring this debt in danger by their act, the courts will give you ample remedy to restrain them.

Mr. HARRIS. Will the Senator not admit the fact that by reason of the dividends that have been paid and are being paid the ultimate security of this debt is not only hazarded, but it is rendered almost certain that it will prove a loss to the Government?

Mr. HILL. On the contrary, I say that by the appropriation of the income, the security selected by the Government for its debt is not only not impaired, is not only not lessened one dollar, but I say emphatically in this very contract which the Government made it has stipulated that the company shall use those earnings. It stipulated that as an inducement, in the eighteenth section, for them to build this road. Who supposes that anybody would have undertaken to build this road on an agreement that for thirty years there should be no earnings from it? Who supposes that any men would undertake to build the road on a distinct stipulation that they were to have no earnings for thirty years? There is a stipulation to pay the Government; but there is no stipulation that they shall have no earnings for thirty years. But the danger the courts will remedy; the future will give you a remedy not lessening the security which the contract has dedicated to the payment of your debt. I beg pardon of my friend for having interrupted him so long.

Mr. BAILEY. Not at all. I am very much obliged to the Senator. I was a little fatigued, and it gave me an opportunity to rest.

But the Senator asks in his concluding sentence who supposes that the parties contemplated that the Government of the United States would take all the earnings of these companies and leave nothing for them to distribute to their stockholders as a compensation for the capital that they have invested. I do not understand that to be the case. I understand from the reading of the bill presented to us by the Judiciary Committee of the Senate and the report which accompanies the bill that even after making these appropriations to the sinking fund there will be left from year to year to the stockholders of one of these companies a dividend of 6 per cent., and to the stockholders of the other not less than 4½ per cent.

Mr. HILL. Have you any more right to take half the income than you have to take the whole of it?

Mr. BAILEY. Not a bit of it. We have a right to take it all if necessary to prevent this meditated fraud. The Senator seems to suppose that because under the law as it exists——

Mr. TELLER. I ask the Senator if he will submit to an interruption? When the Senator says they have a right to take it all to avoid this meditated fraud, I should like to know to what he refers.

Mr. BAILEY. I refer to what they have announced; to the extracts from letters and speeches I have already read.

Mr. TELLER. I should like to know what they have announced.

Mr. BAILEY. They have announced it to be their purpose to divide their net earnings as between themselves and to leave this debt of the Government of the United States to accumulate; and they declare that the consequences and the natural consequences, the almost necessary consequences of their acts, will be to bring these companies to absolute bankruptcy and to cause the Government to lose a great part if not all of the debt that will be due in the future.

Mr. TELLER. Will the Senator answer this question: When the Government took this lien and postponed the payment of the debt until the maturity of the bonds, interest included, did they not guarantee not only by that provision but by a special provision that the companies might take these dividends? Are they not then living strictly within their contract when they take these dividends?

Mr. BAILEY. Considering the question from the point of view that I have now presented, I do not say that they have not the legal right to distribute this money. They have the legal right; I will concede that.

Mr. TELLER. I understood the Senator to say that they had not the legal right. Then I misunderstood the Senator.

Mr. BAILEY. I say they have a legal right to do it, but I say notwithstanding that it is a fraud that they contemplate perpetrating upon the Government of the United States by withdrawing what they may have the legal right to withdraw in the present state of the law, and without the remedial legislation that is proposed from the payment of their debts, and appropriating it to a division among themselves. But I am arguing here to prove that the Congress of the United States has a right to control them and to make that illegal which they claim is legal to-day.

Mr. TELLER. And which you admit is legal now, and yet you say this legislation does not change the contract?

Mr. BAILEY. Not at all. The Government has guaranteed nothing. The Government of the United States does not guarantee to its citizens that the law shall never be changed. In a case in 4 Otto, the

very same claim was made that is made here to-day by a corporation chartered in the State of Illinois, that it had a vested interest in some way in the existing law, and although the Legislature of the State of Illinois changed the law, it was said the action of the Legislature was illegal and unconstitutional. The legislation was intended to change that which before had been right in a legal sense into what the law pronounced to be wrong. Chief-Justice Waite of the United States Supreme Court in commenting upon that says:

> But a mere common-law regulation of trade or business may be changed by statute. A person has no property, no vested interest, in any rule of the common law.

You have no vested interest in that rule that gives you a right to distribute these earnings among the stockholders of this corporation as against the creditors.

> That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the Legislature, unless prevented by constitutional limitations.—*Munn vs. Illinois*, 4 *Otto*, 135.

But there is another reason which has been alluded to by the Senator from Vermont, or which was alluded to a few moments ago, why this legislation may take place. He stated, and he stated what is unquestionably the law, that the property of every corporation is a trust fund for the payment of its debts, made so by intendment of law. The corporators are exempted in their natural persons and in their individual property from either arrest or seizure under execution, and from all the processes by which payment is compelled as between individuals in their contracts with each other; and when these corporators have paid into their treasury or have conveyed to the corporation money or property which is intended for the corporate use, from that moment it is dedicated to the corporate purposes and becomes a trust fund.

Judge Story rendered a decision in the case of Wood *vs.* Dummer, 3 Mason's Reports, in the year 1824, where the stockholders of a corporation had met together and their directors had distributed to them the money of the corporation, leaving the creditors unpaid. A bill was filed to compel them to refund the money and they were compelled to restore it.

Mr. TELLER. It was capital stock.

Mr. BAILEY. It may have been capital stock, but it was the property of the corporation. Do you mean to say that net earnings or profits are not property? Do you mean to say that no obligation rests upon the corporation to provide for the payment of a debt in the future? I will read a few lines from this decision.

> The individual stockholders are not liable for the debts of the bank in their private capacities. The charter relieves them from personal responsibility and substitutes the capital stock in its stead. Credit is universally given to this fund by the public as the only means of repayment. During the existence of the corporation it is the sole property of the corporation, and can be applied only according to its charter; that is, as a fund for payment of its debts, upon the security of which it may discount and circulate notes. Why, otherwise, is any capital stock required by our charters? If the stock may, the next day after it is paid in, be withdrawn by the stockholders without payment of the debts of the corporation, why is its amount so studiously provided for and its payment by the stockholders so diligently required? To me this point appears so plain upon principles of law, as well as common sense, that I cannot be brought into any doubt that the charters of our banks make the capital stock a trust fund for the payment of all the debts of the corporation. The bill-holders and other creditors have the first claims upon it, and the stockholders have no rights until all the other creditors are satisfied.

The capital stock was the subject of litigation in that particular case, and hence he was speaking of capital stock; but the idea, the

reason, applies to property of every description. The decision made by Judge Story in this case of Wood *vs.* Dummer has been upheld by the courts of nearly every State in the Union. The position has been adopted and made the basis of frequent decisions by the Supreme Court of the United States, one of which is very well known to some of us in the South, the case of Curran *vs.* The State of Arkansas, reported in the fifteenth volume of Howard's Reports. Here is a trust fund dedicated to the payment of debts. Here is an obligation resting upon these people to make provision for the payment of this great debt. They say, however, that they will not do so and resist the attempt on the part of Congress to compel by law that to be done which they rest under the highest obligation to do. They say that there is no law that will authorize a bill in chancery to be filed to enforce this obligation. Then, sir, we will make a law; the obligation shall no longer be imperfect; legislatures are established to enact laws, and to correct defects in the written or unwritten law, whenever these defects may be discovered or the business affairs of life shall bring them to notice.

Now, the jurisdiction of courts of equity in regard to trust funds of this kind is unquestioned. It is usually exercised in cases of an insolvent corporation or one whose charter has expired, been annulled, or revoked; but the principle settled by the case of Wood *vs.* Dummer and the case of Curran *vs.* The State of Arkansas is, that property of a corporation is a trust fund for the payment of debts. The principle stands whether the corporation be solvent or insolvent, whether its charter continues in force or has been annulled or has expired by lapse of time. It may be that under the present state of the law where a corporation in the full possession of its franchises shall from year to year divide its earnings between the stockholders in such a manner as to imperil the rights of creditors whose debts are not due, the court will not feel authorized to interfere to control the action of its officers, but the refusal to exercise jurisdiction in such a case is because the creditors cannot maintain an action until the debt becomes due. Notwithstanding, this, however, the property is a trust fund, and the highest moral obligation rests upon the officers to so administer its affairs as to protect the rights of creditors who are entitled to priority of payment over the stockholders, and this becomes a legal obligation whenever a right of action accrues to the creditors.

Now, may not the remedy be advanced without injustice to the stockholders? If the conduct of the officers manifests an unmistakable purpose to bring the corporation to a state of bankruptcy, if they shall refuse to be governed by the ordinary rules of business prudence and care, and when the necessity is obvious refuse to provide a sinking fund for the payment of debts to mature in the future, that cannot otherwise be paid, can they with any propriety object that the law-making power shall require them to do so or shall provide a remedy that will protect the creditor against a meditated wrong?

It is objected that such legislation will divest vested rights. What right is taken away? What vested interest is disturbed by such legislation? The corporation is left in the undisturbed possession of all franchises and all its property. It continues to transact its legitimate business and to make such profits as that business will fairly earn, but is required to do what every government and every corporation whose affairs are managed with any regard to prudence or the just rights of creditors will voluntarily undertake to do.

Is the power to perpetrate a fraud, to be recognized as a vested right? If the law be defective, shall it not be amended and made to conform to the wants and exigencies of society?

Mr. BLAINE obtained the floor.

The PRESIDING OFFICER, (Mr. INGALLS in the chair.) The question is on the amendment offered by the Senator from Ohio, [Mr. MATTHEWS.]

Mr. HAMLIN. I apprehend that Senators who are not in their places do not expect to vote upon the pending question at the present time, and I move that we now proceed to the consideration of executive business.

The PRESIDING OFFICER. The Senator from Maine moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After one hour and thirty-three minutes spent in executive session, the doors were reopened.

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APRIL 1, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committe of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, the pending question being on the amendment submitted by Mr. MATTHEWS.

Mr. BECK. Mr. President, some days ago I requested the Senator from Ohio, [Mr. THURMAN,] the member of the Judiciary Committee in charge of this bill, to allow me a little time in which to present my views upon it. I confess the more I have examined the question, the more I have become satisfied that there is but little use and not much propriety in my speaking at all. The question seems to me so plain and the bill of the Judiciary Committee so moderate in its requirements and so just, that I can hardly discuss it. Still, as it is a matter of very great importance and as the precedent we are about to establish may be regarded hereafter as a guide to future Congresses, I desire to say a few words in relation to it. My argument will be based on three or four propositions, which are substantially as follows:

First. It being conceded that we are large creditors of the railroad companies, will our debt and interest be secure and will it be paid when due if we stand where we are under existing laws and do nothing?

Second. Are the railroad companies able, without serious embarrassment to the corporations, to secure our debt, if they are required to begin now to create a sinking fund for that purpose? And

Third. Are they making or proposing to make any effort to secure the payment of their debts? If not, and our debt is in danger, have we either by virtue of our inherent authority or under our agreement with them any other feasible plan except that proposed by the Judiciary Committee, which bill I propose to sustain?

I think, Mr. President, in whatever else Senators differ, there is no

disagreement as to the justice of our debt, the solemn assurances given by the companies that it should be repaid with interest, the certainty that they never would have received the money or any part of it but for those assurances, and the equities which the tax-payers of the country have to demand of us, as their trustees, that it should, if possible, be secured, so that when due it may be collected and their burdens to that extent lightened. Nor is there any dispute as to the magnitude of the debt, at least up to a point which renders it conclusive that the first-mortgage bonds and the bonds of the Government will not only not be paid but that the companies do not intend to make any effort to pay them when due. In other words, the companies, while clamoring for the protection of what they call their vested rights, are wholly disregarding the vested rights of the people who have the debt and interest owing to them paid as it matures. I say vested right because although it is not payable now, the right to future payment is as certain as though it was. The first-mortgage bondholders do not care; the property will sell for enough to pay them, and therefore I am not speaking of or seeking to guard their rights. The directors and stockholders will take care that they themselves are the owners of those bonds long before they mature. There are net earnings enough to make that certain, and they can become the owners of the roads under sales to satisfy the first mortgage free from any of the embarrassment and limitations of the acts of 1862 and 1864. Their vested rights under such sales would perhaps then be entitled to respect.

To show that this is not an unreasonable apprehension of mine, I read from a report on this subject made by the Jndiciary Committee of the last House of Representatives, which carefully considered the subject. The report is No. 440 of the first session of the Forty-fourth Congress. In that report that committee, speaking of the immense debt we hold against the railroads and what will become of it if we do not take steps to secure it, say:

> To pay this, the Government may find only a worn-out road, which put up at auction would not pay the first-mortgage bonds. And if these should happen to be in the hands of those who now control the road, they would doubtless become the purchasers and sole owners, for the objection to a Government purchase would be so great it would never be made, and there could be no other competitor who would be formidable as a purchaser. If there could be danger of this, the managers of the road could permit the interest to accumulate on the first-mortgage bonds to any amount requisite to secure their purpose to become owners of the road without paying any of its debt to the Government. The necessity for prompt measures to secure the Government cannot be doubted.

We—and by that expression I mean *we, the people*, the tax-payers of the country—acting through our agents, the then Congress and President of the United States, two of the three co-ordinate branches of the Government, granted and gave many valuable rights and a vast domain to these companies, and to further aid them loaned the Union Pacific Railroad $27,326,000 and the Central and Western Pacific Railroads, now one company, $27,855,000 for thirty years, agreeing to pay the interest on our own bonds during that period. After allowing all the credits obtained and obtainable under existing laws from half the Government transportation and 5 per cent. of the net earnings of the roads, it is safe to say (waiving all question as to our right ultimately to receive interest on the payments of interest from the time it was paid) the companies will owe us in the year 1900, as stated by the Senator from Indiana, [Mr. McDONALD,] $122,305,000, of which the Union Pacific will owe over $55,000,000 and the Central and Western Pacific $67,000,000. If we are entitled, as the Attorney-

General of the United States insists, to interest on the payments of interest from the time we paid it, the amount that will be due the people of the United States by these corporations will be $174,000,000. I do not well see how the legality of that claim can be denied; its equity cannot be. But waiving that, all agree (and I desire to base my argument on undisputed facts) that they will owe us $122,000,000. The companies and their friends insist upon their right to distribute all dividends or net earnings, up to the maturity of the bonds, among their stockholders, which means among themselves, free from any obligation to provide in advance for the payment of the debt thus maturing, even for the payment of any part of the principal of the first mortgage bonds, which, when due, will amount to $55,000,000. The two roads jointly own nineteen hundred miles of railway, so that our debt of $122,000,000 will alone be about $65,000 a mile on the whole line of the road, or at least $15,000 a mile more than it would cost now to build and equip a duplicate road and put it in good repair, which, of course, their roads will not be when the time of sale comes, especially if it is the interest of the managers to buy them in at a low price under the first mortgage bonds, no matter what steps we may take to interfere with them. They are masters of the art of delay. All they desire now is to get this controversy on their terms into the courts, and they are safe for at least five years, no matter how unjust or flimsy their defense may be. It must be apparent, therefore, from the admitted facts, that they, if let alone, mean to be hopelessly insolvent when our debt matures.

One of the recitals of the bill of the Judiciary Committee sets forth the facts as to their present condition very clearly in the following words:

> Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United States, of the said Central Pacific Company, amount in the aggregate to more than $96,000,000, and those of the said Union Pacific Railroad Company to more than $88,000,000.

Being an indebtedness now of nearly $100,000 a mile on their nineteen hundred miles of railroad. It did not need the confessions of Mr. Dillon and Mr. Huntington to convince any Senator of their purpose to be insolvent when our debt matures. A simple calculation proves it. Still I desire to make this proposition plain, as it is the foundation of my views, and I cannot state it better than by reading from the very able speech of the Senator from Tennessee [Mr. BAILEY] on this subject. He said:

> In order that we may fully appreciate the danger that threatens the Government and people of the United States of losing the hundreds of millions of dollars advanced and to be advanced in building this great highway of commerce, I beg to call the attention of the Senate to an extract from a letter written by Mr. Dillon, president of the Union Pacific Railroad Company, on the 9th of February, 1875, addressed to Mr. Bristow, then Secretary of the Treasury, in which he says:
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> "The mortgage held by the Government, in its terms and by judicial decision of the United States circuit court, cannot be enforced until the maturity of the bonds, which is near the close of the present century.
>
> "The bonds are accumulating an interest-account, also uncollectible until the principal is due. Principal and interest, when due, will amount to the very large aggregate of over $77,000,000"—
>
> And he is writing about the Union Pacific Railway indebtedness alone—
>
> "though the actual amount advanced by the Government was only $27,236,512.
>
> "For this very large amount the Government has only a second mortgage, and if it be allowed to accumulate, without any provision being made to meet it, the company will probably be utterly unable to pay it.
>
> "At the same time, it is equally manifest that the Government will be unable to collect it, except upon the assumption that it will advance the money to discharge prior mortgages, and run the road on Government account—a policy which wise statesmanship could not advise.

"By standing still, therefore, the company has a load of debt accumulating for which no provision is made, and the Government is drifting further and further from the opportunity to secure a just return for its advances. To do nothing is to injure both the Government and the company, perhaps irretrievably to both.

"In this dilemma, I venture to make a proposition which offers on the part of the company all it can possibly do, and secures to the Government a substantial return for its advances."

This intimation of probable insolvency of the Union Pacific Railroad Company, and consequent loss to the Government, is repeated in a communication addressed to the Senate Committee on the Judiciary on the 12th of November, 1877, by Mr. Dillon, and Mr. Huntington, the vice-president of the Central Pacific Railway, who joined with him in saying as to both companies what I will ask the indulgence of the Senate to listen to:

"Nearly three years since the officers of the Union Pacific and Central Pacific Railroad Companies called the attention of the Secretary of the Treasury to the fact that contrary to the general expectation at the inception of the enterprise,"—

And I ask attention to this phraseology—

"a balance of accounts in his ledger was accumulating against them which, unless some remedial legislation was soon had, would amount, by the time it became due and payable, to a sum which it might be embarrassing to the companies to pay simultaneously with their first-mortgage debt, and greater than the value of the subordinated lien of the Government on the properties themselves."

But as if this deliberate declaration was not sufficient to warn the Senate of the danger that threatens, Mr. Huntington, who appeared before the Judiciary Committee, takes occasion to say in an address delivered to that committee:

"By the time"—

Speaking of the Government debt and the first-mortgage debt, equal in amount to the principal of the Government bonds issued to these railroad companies—

"By the time both mature and become payable it is not at all likely the property will be worth their aggregate sum, and if the shrinking and settling of prices should continue further it may happen that it will not suffice to pay more than the first mortgages."

These carefully considered statements are accompanied by equally well-considered declarations to the effect that by the terms of the acts of 1862 and 1864 the officers of the two companies have the moral as well as the legal right to distribute the earnings of the two roads to the stockholders, and although this course will certainly lead to the insolvency of the corporations, as they agree, they very plainly threaten that unless the Government will yield to their terms they will manage affairs solely with regard to the interests of the proprietors and without regard to the just claims of creditors.

It will be observed that Mr. Dillon assumes that the debt of the Union Pacific Railroad Company will be much greater than the Senator from Indiana [Mr. McDONALD] stated. The Senator from Indiana said it would be at least $55,000,000. Either statement is enough to justify my assertion as to the utter insolvency of the companies at the time our debt matures. I agree with both Mr. Dillon and Mr. Huntington in their statement that unless some remedial legislation is soon had, it may happen that it (the property of the roads) will not suffice to pay more than the first mortgage. I know, as they admit, that without some provision being made to meet our debt the companies will put it out of their power to pay it. I differ with both of them as to the necessary and proper remedial legislation to save the debt. I think the bill offered by the Committee on the Judiciary will give us a chance to do so; the bill submitted by the companies to the Senate is absolutely and certainly a substantial confiscation of it all. I cordially agree with Mr. Dillon that any attempt on the part of the Government to advance the money to discharge the prior mortgages and run the road on Government account is not only a policy which wise statesmanship could not advise, but would be destructive of all my ideas of republican government, and it is perhaps because they rely upon that being the view of members of Congress in the future that they are determined to push us to that contingency. They are willing to allow the first-mortgage bonds to accumulate, and make no provision for them, make no provision for the principal of our debt or for anything but a fraction of the inter-

est on it, although they have solemnly obligated themselves to pay the principal and all the interest at maturity, which they confess they do not intend to do, admitting that without some remedial legislation it cannot be done, and substantially asserting that unless it is done they will not try to comply with their obligations. Their boldness and audacity commands a certain degree of respect; they seem to feel that they are strong enough to control or defy Congress, and their insolent avowal of a determination to disregard their obligations shows how confident they are of their power.

I am free to say that I would rather see all the debt and all the interest lost than to see this Government undertake to purchase the roads and become a great railroad manager. I will do nothing that will tend to bring about that contingency. We have centralization and consolidation and personal government enough—at least we have had it in the last few years—to warn us against that. I have seen this Government within the last ten years attempt to take possession of all the telegraph lines in the country. I have seen propositions before Congress to take Government control of all the railroad lines of the country and add another one hundred thousand to our one hundred thousand officials. Attach these great railroad lines to the Government and make them part of its political machinery and we will no longer have a Republic of coequal States; there will be Senators sitting on this floor by the dozen, the creatures of the Administration, whatever its politics may be, and of these railroad corporations, pledged to stand by them in all their contracts with the unorganized masses of tax-payers.

I read the other day in Mr. Spofford's book and was very much impressed with the wisdom of an article on this subject taken from a French journal, published in August, 1877. That country is making some efforts toward establishing a republican form of government, but is not as far advanced as we think we are. Speaking of government management of railroads, it uses arguments to my mind very forcible. After showing how private companies managed them, it said:

> In the hands of the state, on the contrary, the railway falls into the jurisdiction of one of the ministers, and it is managed administratively. The state has to do with administration, and not with commerce.
>
> In England and in Austria, where the railways are managed on the most commercial plan by the companies which own them, or which have obtained the charters, the commercial agents of these companies traverse the country to secure freights, just as the clerks of any merchant would travel to open up markets for the goods of their patron.

And then it proceeds to show how the Government will and can do none of these things.

Again:

> One of the principles taught by political economy is that in the domain of labor, in that of industry and of commerce, the sphere of activity of the state begins nearly where the *rôle* of the individual ends, or where the activity of private industry ceases. Wherever, in the vast field of industrial action, individual efforts can be successfully applied, the government should leave free room to that agency, and not enter into competition with it.
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> * * * * * * * *
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> Let it not be said that if the state effects, on the one hand, a lower price for transportation by railway, it may well, on the other hand, increase the tax upon the people, and that a compensation will be arrived at in that manner. This might be true if the increase of tax sustained by each citizen were proportionate to the use he made of the railway. Such a distribution of the taxes is impossible in practice, and it would happen that he who could make little or no use of the railway would pay the tax for him who constantly uses it, which would be a gross injustice. The state is obliged in fairness to impose such a tariff upon railway traffic as will enable it, by the aid of the profits realized, to pay for the capital invested in

the railways which it works. What, then, becomes of the theory of those who hoped that the government, if it were to buy up all the railways, would carry for the public at the mere cost of working the road?

From the moment that the railways should become the property of the government and be managed by it they would become subject to political influence. The minister of the railways would find himself absolute master in questions which touch industry and commerce most intimately; he would dispose of one of the most considerable elements of national wealth—transportation; he would be chief of an army of functionaries scattered over the whole country, and in continual contact with the whole nation; the railways would pass very probably into the *rôle* of propaganda, or the means of yielding a pressure of political influence in the hands of the minister or of a majority of the legislative body. Who would occupy himself with the development of traffic, with the increase of receipts, with the curtailment of expenses, with the proper and economic use of the railway *personnel*? From that day, the railways would have lost their essential character. They would have ceased to be an industry, they would become only a bureau, and would constitute only one section of the more or less complicated machinery of the government.

I am thoroughly convinced of the wisdom and statesmanship of these views, and will never consent that this Government, even to save a debt however large, shall become a great railroad monopolist or engage in any such competition with its citizens.

For such reasons as are stated in that article, and they are well stated, the railroad companies know that as long as there is a democratic representative left in either the Senate or House of Representatives, and there seem to be a good many of them coming here now, the Government will in no event purchase on its own account or take charge of these railroads; and if their managers can only put them in a shape where they can purchase them to satisfy the first-mortgage bonds and defeat the collection otherwise of our just debts, they will vest themselves with all these great corporate rights and powers upon their own terms because they know that we will never undertake to purchase or run these railroads on Government account.

Therefore, I assume that the first proposition I made is plain, which was, that we being creditors, with a large *bona fide* debt at the mercy of these corporations, must take some step as our debt is in imminent peril; the companies obviously do not intend to pay it; we cannot afford to buy and run the roads, even to save ourselves, and therefore something has to be done, or the debt will be lost. The next question is, are the railroad companies able, without serious embarrassment to the corporations, to make our debt secure. If they are not, then they might present some equity, and we might settle by some equitable adjustment; but I assert, and the proof shows, that they are fully able without sacrifice to pay every dollar they owe. I will not go into detail on that subject. I desire, however, to call attention of the Senate and put upon the record some facts which I think will satisfy every Senator that they are able to pay all their debts. I shall begin with extracts from the report of the Committee on the Judiciary which accompanies this bill, which report makes this part of the case clear and conclusive. It shows that the railroad companies, even admitting that they will not continue to make as much by $2,000,000 as they have made during the last fiscal year, which they will surely exceed on the average hereafter, but upon the average receipts of the last four years can pay all their interest, pay dividends upon the nominal amount of their stock varying from 4½ to 6 per cent., supply all the sinking fund that the bill of the Committee on the Judiciary requires, and carry on their business without embarrassment. The extracts from that report prove it. Every Senator, I presume is familiar with them. If not, he ought to be.

Speaking of the Union Pacific Railroad and its property the committee, among other things, say:

We have seen that, for the last four years, the average annual net income of the company, deducting operating expenses alone from its gross receipts, has been $6,547,149.91. We think that this income will be largely increased in the future by the increasing business of the company, the sales of its lands, and its immense coal-mines. In reference to these mines the report of the directors to the stockholders for 1874 says:

"The Union Pacific Railroad Company own, in Wyoming Territory, an area of coal-fields greater than the entire anthracite-coal fields of the State of Pennsylvania.

"The coal-fields of the company extend along four hundred miles of the road, and five million acres of its lands are within the coal measures. The coal is superior for ordinary fuel, and unequaled for making steam and for all manufacturing purposes.

"It will furnish cheap fuel to the company for its own traffic, and will afford large additional revenues from the sale and transportation of coal for domestic and manufacturing uses, to supply the country extending for nearly two thousand miles—from Omaha to the Pacific coast."

The coal from their mines cost them less than $1.30 per ton.

The Government directors, in their report to the Secretary of the Interior, furnish the following statement:

The earnings of the road for the year ending June 30, 1877, show a considerable increase over the preceding year, and largely more than any other year in its history.

| | |
|---|---|
| The gross earnings for the year ending June 30, 1877, were | $13,719,343 82 |
| For the year ending June 30, 1876 | 12,113,990 69 |
| Increase for the year 1877 over 1876 | 1,605,353 13 |
| Operating expenses, as claimed by company, for year 1876 | 5,447,819 27 |
| For 1877 | 5,402,252 24 |
| Gain for 1877 over 1876 | 45,567 03 |
| Net earnings for the year 1877 | 8,317,091 58 |
| Net earnings for the year 1876 | 6,666,171 42 |
| Increase for 1877 over 1876 | 1,650,920 16 |

This is a surprising result, considering the general depression which has rested upon the business of the country, and fully justifies the opinion expressed in former reports by the Government directors relative to the immense possibilities of this road.

The committee, in their extreme caution, do not base their calculations on the earnings of last year, but on the average of years past, as the following table from their report shows:

| | | |
|---|---|---|
| Average annual gross receipts, less operating expenses, as *ante* | | $6,547,149 91 |
| Deduct interest on first mortgage | $1,633,920 00 | |
| Five per cent. on net earnings, payable to Government under existing law, say | 245,661 00 | |
| One-half transportation, payable to Government under existing law, say | 421,311 87 | |
| Interest on company's sinking fund bonds, 8 per cent. on $14,326,000 | 1,146,080 00 | |
| Interest on income bonds, 10 per cent. on $10,000 | 1,000 00 | |
| Interest on Omaha bridge bonds, 8 per cent. on $2,279,000 | 182,320 00 | |
| One-half transportation account to be paid into the sinking fund as per bill | 421,311 87 | |
| Further sum to be paid to same as per bill | 850,000 00 | |
| | | 4,901,604 74 |
| Leaving for dividends among stockholders | | 1,645,545 17 |

Being about 4½ per cent. on the nominal amount of the stock, or 6½ per cent. on its present market value.

As to the Central Pacific Railroad Company, the committee in their report say:

The gross earnings of the road, less the operating expenses, for the years 1872 to 1876, both inclusive, as stated in the reports of the directors to the stockholders, were as follows:

| | |
|---|---|
| 1872 | $6,952,361 73 |
| 1873 | 7,894,681 46 |
| 1874 | 8,342,898 76 |
| 1875 | 9,177,882 09 |
| 1876 | 9,137,004 73 |
| Total for five years | 41,504,828 77 |
| Average annual net receipts | 8,300,965 75 |

If we deduct the interest upon the first-mortgage bonds, as well as the operating expenses, from the gross receipts, the account of said five years would stand as follows:

| | |
|---|---|
| Gross receipts, less operating expenses | $41,504,828 77 |
| Deduct five years' interest on first-mortgage bonds, $1,671,340.80 × 5 | 8,356,704 00 |
| Net earnings for five years | 33,148,124 77 |
| Average annual net earnings | 6,629,624 95 |

After showing what is required by the bill to be paid into the sinking fund, the committee add:

That the company can make these payments and have a surplus sufficient for handsome dividends to its shareholders is easily demonstrated from the facts already stated. But the same thing is shown more concisely by its statements of profit and loss in the directors' reports for 1875 and 1876 to the stockholders.

By the report for 1875 it appears that, after paying all expenses and interest, the company paid to its shareholders dividends amounting to 10 per cent. on the nominal amount of the stock—amount paid, $5,427,550—and it had a surplus of $10,305,953 left.

In 1876, after paying all expenses and interest, it paid dividends amounting to 8 per cent. on the nominal amount of the stock—amount paid, $4,342,040—and had a surplus of $10,265,589.27 left. If we take these two years as a guide for the future—and we think that we may safely do so—the annual amount that will be divided among the shareholders, should no sinking fund be created, will be 9 per cent. on the nominal value of the stock, $4,883,795.

If the bill we report become a law this amount would be diminished by the amount required to be paid into the sinking fund, say $1,400,000, leaving $3,483,795, after the payment of all expenses and interest and the payments into the sinking fund, to be divided among the shareholders, being 6.4 per cent. on the nominal value of their stock.

That is enough to prove my assertion that the companies are able to secure our debt without embarrassment, and being able every principle of justice requires that they should be compelled to do so.

The Secretary of the Interior, in his last report to Congress, he being the officer who is charged with the duty of having proper examination and report upon these subjects made, from pages 29 to 35 of his report to Congress not only shows that the companies will be insolvent, but that the money we have advanced and are obliged to pay will be lost unless some legislation is had and a sufficient sinking fund established. He gives a detailed statement of the earnings of the roads, the growth of their business, the value of their property. Among other things he says:

The Union Pacific Railroad Company and the Central Pacific Railroad Company did better than ever before in the year 1876, notwithstanding the fact that all other railroad companies suffered from the great depression of trade and industrial enterprise.

He takes from Poore's Manual, a standard authority on that subject, for 1877, these facts:

| | |
|---|---|
| Gross earnings | $31,033,803 |

| | | |
|---|---|---|
| Operating expenses | | 14,000,286 |
| Net earnings | | 17,033,517 |
| Bonded interest, paid | $6,612,815 | |
| Eight per cent. dividend on stock | 7,299,000 | |
| | | 13,911,815 |
| Surplus | | 3,121,702 |

Leaving a surplus after doing all that of $3,121,702. He then contrasts them with all other roads of the country and he shows conclusively that if they are required to lay aside a reasonable portion (and surely the portion required by the Judiciary Committee bill is a reasonable one) they can so far reduce that debt as to make it a very light burden upon them when the debt becomes due, one that this Government would be glad to extend after they had in good faith put themselves in such shape as to show that they were honestly trying to pay it. The necessity for this legislation now is that they are not honestly trying to lay up any fund to secure us, and they are defying our authority to require them to do it and are avowing that they do not intend to make even an effort to secure us, and still they are crying out loudly for "good faith" and "vested rights!" Good faith to the people who have borne all the burdens which have enriched them forms no part of their code of morals. I hope it will be regarded by their representatives here.

We have commissioners appointed to examine the condition of the Union Pacific Railroad. They are required by law to make a report to the Secretary of the Interior. They have done so, and they show that absolute insolvency, if the present course of these railroad directors is allowed to continue, is staring them in the face, though they are receiving such vast earnings. The commissioners, among many other things that I might read bearing upon the questions now before us, because they urge in every form the importance and absolute necessity of congressional legislation for the protection of our debt, say:

> There ought to be no conflict between the United States and the owners of the road. There is no just reason why there should be. The United States advanced the bonds in the sum named, and has paid and is still paying the interest thereon. This is a debt which ought to be paid; but under the decision of the Supreme Court of the United States it will not become due until the maturity of the bonds, thirty years from the date of their issue. To let it run on, accumulating to the end of this time, will be the worst possible policy and ruinous at last. If a just accommodation can be arrived at, for the avoidance of this result, it would be wise for all the parties concerned to avail themselves of it.

They make calculations and exhibits as to the sinking fund required, which are substantially those made in the Judiciary Committee report. They add:

> During the year covered by this report the company continued its policy of paying quarterly dividends of 2 per cent., making 8 per cent. per annum. In the report for 1876 this subject was referred to in the following language, namely: "The Government directors have not approved the dividend policy of the company. They have held that the amounts heretofore claimed as due to the Government on reimbursement account, under the several provisions of law establishing and regulating the same, should be regularly paid before the declaration of dividends." This position is here reaffirmed.

They show that large sums are taken from the earnings of these roads to the detriment of the Government and the diminution of its security to aid other railroads, such as the Utah Central, Utah Southern, Utah Northern, Republican Valley, and Colorado Central Railroads, while still others are in contemplation. But I have not time to dwell longer on this branch of the subject.

In must be borne in mind that the dividends I have spoken of are made on the nominal value of the stock, which in the Union Pacific

amounts to $36,762,300, in the Central Pacific to $54,275,500, much the larger portion of which they never paid in any form thirty-three cents on the dollar for; stock, 66 per cent. of which in the Union Pacific Company, it is stated by the reports of the House committee, represented nothing but the fraud of the Credit Mobilier and other like frauds. I do not wish to make any statement on that subject except by authority. The Judiciary Committee of the House of Representatives, whose report I hold in my hand, say on page 21:

> From this it will be seen these companies, on their own showing, are making large profits, and are abundantly able to pay and indemnify the Government against future loss, and pay liberal dividends besides on the par value of stock which, as has been shown by a committee of the House as to the Union Pacific Company, cost its original holders "not more than thirty cents on the dollar in road-making," which road-making itself paid enormous profits—profits realized through the notorious Credit Mobilier of America.

The committee gives extracts from the report of that committee. Here is a specimen:

> In a report made to the House on the 20th of February, 1873, by a committee thereof, it was said of the Union Pacific Company:
>
> "That the moneys borrowed by the corporation, under a power given them only to meet the necessities of the construction and endowment of the road, have been distributed in dividends among the corporators; that the stock was issued not to men who paid for it at par in money, but who paid for it at not more than thirty cents on the dollar in road-making; that, of the Government directors, some of them have neglected their duties and others have been interested in the transactions by which the provisions of the organic law have been evaded; that at least one of the commissioners appointed by the President has been directly bribed to betray his trust by the gift of $25,000; that the chief engineer of the road was largely interested in the contracts for its construction; and that there has been an attempt to prevent the exercise of the reserved power in Congress by inducing influential members of Congress to become interested in the profits of the transaction. So that of the safeguards above enumerated none seems to be left but the sense of public duty of the corporators."

These men have issued stock to the amount of over $36,000,000, stock obtained and issued, as that report shows, under such circumstances as these. The Cental Pacific Company has issued stock to the amount of over $54,000,000, and upon it they are paying and insisting upon continuing to pay dividends quarterly at the rate of from 8 to 10 per cent. per annum, leaving the debt of the Government absolutely unprovided for, and complain bitterly because we propose to do something in a very mild way to secure ourselves against their misappropriation of funds under such circumstances.

Mr. BAYARD. I should like to ask the Senator from Kentucky how much money was subscribed and paid in for the capital stock of the companies respectively.

Mr. BECK. I am not prepared to answer accurately. The reports made by Mr. Poland and Mr. Wilson to the House of Representatives set it forth with substantial accuracy; but I have not the figures in my mind at present, nor have I the reports before me.

Mr. MERRIMON. Four hundred thousand dollars cash.

Mr. BECK. I know it was a very small sum.

Mr. BAYARD. Then, upon a *bona fide* subscription of $400,000 stock is now held to the amount, of how many millions does the Senator say?

Mr. BECK. Over $36,000,000.

Mr. BAYARD. And upon those $36,000,000 dividends to the amount of 8 per cent. per annum have been declared?

Mr. BECK. It was last year and for years preceding.

Mr. MERRIMON. May I read from the report made by Mr. Wilson?

Mr. BECK. I should be glad to have the exact figures.

Mr. MERRIMON. Here is one of the findings of the committee on page 21 of the report made by Mr. Wilson:

> The statute requiring the capital stock to be paid for in money at par, it has in fact been paid at not exceeding thirty cents on the dollar in road-building, excepting, perhaps, the sum of about $400,000.

Mr. BAYARD. The Senator will understand me. I am not referring now to the stock of the Credit Mobilier; I am referring to the capital stock of the Central Pacific Railroad and the Union Pacific Railroad.

Mr. MERRIMON. This is the Union Pacific alone.

Mr. BAILEY. In regard to the Central Pacific, it was stated at the last session of Congress by the Senator from California [Mr. BOOTH] that suit had been actually brought by some of the stockholders of the Central Pacific against the managers to recover the profits, and they had paid to each of these $5.16 for every dollar they had subscribed to the capital stock in order to avoid the litigation.

Mr. BAYARD. Does the Senator speak of the stock of the Credit Mobilier or the capital stock of the railroad company?

Mr. BAILEY. I refer to the capital stock of the Central Pacific Railroad.

Mr. BECK. I had before me and thought I could lay my hand on it, but I cannot at this moment, a bill filed in the State of California against the Central Pacific Railroad Company, setting forth with great accuracy the frauds alleged to have been perpetrated by its construction company and the division of stock. I did not intend to refer to that specifically, because it may be that that was satisfactorily answered, but I read in the speech of my friend from North Carolina [Mr. MERRIMON] an extract of a speech made by Hon. William A. Piper, of California, in the House of Representatives, April 8, 1876, in which he made charges of the grossest frauds against them. If half of them are true these companies are entitled to but very little consideration. Not knowing whether they were absolutely sustained or not, and not desiring to reopen in this debate the questions of fraud except so far as necessary to repel intimations and charges of bad faith on our part, seeking to do no more than save the debt of the Government and embarrass the companies as little as possible, I did not desire specifically to go into any of the well-known corrupt practices connected with their original organization; nor to treat them for the purposes of this bill otherwise than as if all the stock they owned was *bona fide* stock, and their organization under the laws of 1862 and 1864 had been made in good faith.

I think I have established two of my propositions, that our debt will certainly be lost unless something is done and that the companies are absolutely and abundantly able, without any sort of embarrassment, to secure its payment if they desire to do so. I have shown, also, that they do not intend to do it, and they come now before the Senate with certain propositions, one of which is in the form of a bill introduced by the Senator from Arkansas, [Mr. DORSEY,] but which is in fact the proposition of the railroad companies as I find it *verbatim* in a pamphlet containing their argument, which some one sent to me. It there appears precisely the same as the bill introduced by the Senator from Arkansas. Therefore I say the bill that was referred to the Railroad Committee was their proposition. Looking at it as carefully as I can I am brought to the same conclusion that the Senator from Tennessee arrived at, that it was absolute confiscation of the debt to comply with the terms proposed by the companies in that bill

They offer to give us the land. But the Senator from Tennessee [Mr. BAILEY] stated it so well, I will read what he said about it; I cannot state it as well. He said:

> They require the Government to pay $15,000,000 for twelve million acres of land a gift from the Government, and that this sum shall be placed at interest while they pay none, until it shall swell to the sum of $75,000,000. Next, they demand that their annual payments of $1,166,000 shall be placed at interest and that compounded until the interest shall reach $48,000,000. But, not satisfied with these exactions, they demand that for seven years and nine months the Government shall receive no interest on $86,000,000, making a further loss of $49,000,000 or a total of $172,000,000, exceeding the entire debt, principal and interest, that will be due from them to the Government at that time.

They had the audacity—I might use a harsher term—to call that a business proposition and the best they could do in the face of such facts as I have just shown. They must have immensely overrated their own power of persuasion or influence or immensely underrated the business capacity of the men who are acting in this body as trustees for a people who in good faith loaned them the money under solemn pledges and assurances that it should be paid back to the uttermost farthing. That proposition was too ridiculous to be seriously considered, I hope, by any Senator.

The Railroad Committee did not adopt it but they offered a substitute, which was reported by the Senator from Ohio, [Mr. MATTHEWS,] which is a surrender of from forty-one to forty-five millions of our debt to these companies, and in my opinion is not worthy of the consideration of Congress on that account. But it is vicious legislation for other reasons. It is a proposition from Congress to the railroad companies which they have the right to accept or reject after retaining it for four months; it is a concession that we have no power over them under all the reservations of the acts of 1862 and 1864. It might be very well for Congress to consider a proposition made by railroad companies, but it is unworthy of Congress to be making propositions which we confess by the very act of making that we have no right to make and no power to enforce, and which it is for them to say whether they shall become laws or not. It is our business to make laws, not to propose bargains. Some Senators think the companies would accept it, some think they would not. Nobody professes to know; we are assured only of delay. I suppose they would accept it, as they could save by it forty-five millions which they justly owe us, rather than take the chances of the passage of the Judiciary Committee's bill or some other measure which does not suit them.

I shall vote to reject both these bills, that introduced by the Senator from Arkansas, and the proposition or attempt at a bargain and a surrender of our rights as well as the surrender of $45,000,000 contained in the bill introduced by the Senator from Ohio, [Mr. MATTHEWS.] I would rather stand where we are even if we did lose money, than to be bargaining with corporations upon such terms, giving them four months to accept until this Congress adjourns and allow another year to run, when the proposition will perhaps have to be modified on some point and go over again for another session or be stifled in the next short session of three months. We either have the right to have our debt secured, or we have not. If we have, we ought to secure it; if we have not, let Senators tell the country why.

I propose now, as briefly as I can, to state my construction of the rights of the Government and the corporations under the acts of 1862 and 1864, waiving the question of the power of the Government, as such, over quasi-public corporations such as these, and looking at it simply as a contract. Congress under peculiar circumstances, which

I will refer to, gave the lands, loaned the credit, and advanced the money of the people to these corporations upon certain specified conditions, for the accomplishment of certain purposes, chief among which were the following: That a great railway should be constructed and perpetually maintained by these corporations, over which the Government should have the perpetual right to transport everything it desired at rates not exceeding what private persons were required to pay for like service, and when necessary should have precedence and priority over all others in the use of the roads. Government directors were to be appointed to keep Congress advised as to all matters connected with their management, so that proper steps could be taken by such legislation as might be necessary to protect the Government against any acts which might tend to thwart this great object. All the property of these corporations was by these acts (subject to a prior incumbrance authorized by the act of 1864) mortgaged to the United States to secure the repayment of the bonds issued by the Government, and the interest thereon. Five per cent. of the net earnings and one-half of the charges for Government transportation were to be applied to the payment of the interest on the Government bonds. And to guard against all contingencies, and to enable the Government at any and all times to protect the people against any act or omission of the managers of these roads, which might either render it impossible for them to secure in perpetuity the Government's right of transportation or endanger the ultimate payment of the principal and interest of the bonds, section 22 of the amendatory act of July 2, 1864, provided "that Congress may at any time alter, amend, or repeal this act." That section was as much a part of the contract—and I am willing to regard it as such, in accordance with the principles laid down in the Dartmouth College case—as any other part of the contract.

The stockholders and their boards of directors accepted all the provisions of the act, received the lands and the Government bonds issued, and obtained the money on the first-mortgage bonds under it, and agreed in consideration of all these immense benefits that the Congress of the United States should have the right at any time to alter, amend, or repeal the act. Neither party, of course, knew what contingencies might arise or in what regard the provisions, objects, and purposes of the bill might require changes to be made; but it must be apparent that Congress intended, and as trustee for the people whose money and property was being loaned and given away, demanded that the right to so legislate at any time as to protect and secure the perpetual use of the roads and the repayment of the bonds and interest by such alteration or amendment as the representatives of the people in Congress assembled might deem wise and just should be vested in them, and that the companies agreed to, and accepted that limitation and condition, without the acceptance of which they could not have received any of the benefits, rights, or privileges obtained by them under the act, especially of 1864. That was not a mere act either creating artificial persons or confined to the granting of purely corporate rights; it donated millions of acres of the public domain; it postponed the prior lien of the Government for over $54,000,000, so as to enable the companies to obtain on a first mortgage $54,000,000, which they could not have obtained but for that act, and it seems to me when Congress made such donations and concessions, it would have come far short of its duty as a public trustee if it had failed to retain power to so alter and amend the acts by which such gifts were made and such burdens imposed on the tax-payers of the

country as to secure to them, by whatever legislation might become necessary, the repayment of the money and the enjoyment of the privileges which these companies undertook to pay and maintain; and it seems to me that it comes with a bad grace from these companies and their advocates to charge that as moderate, considerate, and conservative a measure as that proposed by the Committee on the Judiciary, is either a violation of contracts or in any manner harsh, oppressive, or unjust. It is conceded that the corporations will be hopelessly insolvent and that the people of the United States will be cheated out of the money they have paid for these companies, all of which they pledged themselves and their property to repay with interest, unless steps are taken now to require them to lay aside a fund for that purpose, and not divide out all their earnings among the stockholders, as they are now doing as though they owed no debts or never intended either to pay or provide for them.

The vice in the arguments of gentlemen on the other side consists in the assumption that the twenty-second section of the act of 1864 does not mean what it says. They boldly, clamorously, and, some of them, defiantly assert that, although the section expressly provides that Congress may at any time alter, amend, or repeal the act, and although the companies accepted it, agreed to it, and acted upon it, still they not only have the right to repudiate it now, but have the right to use the roads and their earnings for their own private benefit, in absolute defiance of the Government and the law. If the bill of the Judiciary Committee is as flagrant an outrage on their vested rights as they would have the Senate believe, the courts of the country are open to them, because, when the Attorney-General, under sections 10 and 11, seeks by judicial proceedings to enforce its provisions, all the rights of the corporations can be protected by judicial decisions. We are asked why we do not proceed in the courts now, without the intervention of Congress. The answer is twofold and either is satisfactory: we do not propose to embark in a five years' law-suit with them and allow them to be dividing during all that time millions on millions of dollars which, during these years of litigation, ought to be deposited for the security of the United States in the Treasury; and we do not intend at the suggestion or by the order of the companies to fail or refuse to enact such laws under the authority reserved to amend or alter the existing law as will enable us to present our claim before the courts with all the sanction that legislative authority can give. If that authority is invalid the courts will say so; if valid, the wisdom of our action as well as its legality will be vindicated. I have no doubt as to the right of Congress to pass the bill; indeed, in view of the known facts, it would, looking at them from my stand-point, be an obvious violation of our known duty if we failed to do it. I propose to waive all questions of power for the purposes of this argument and look at it as a contract, and I desire to say here that I believe the United States has no more right or constitutional warrant of authority to violate the obligation of contract than States have. I believe with Mr. Madison that—

> Bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts are contrary to the first principles of the social compact and to every principle of sound legislation.

It never entered into his mind that the Federal Government would ever assert any such power, and I regret that the Committee on the Judiciary in their report should have intimated the possibility of the assertion of such a claim under any circumstances. I am voting for their bill, however, and not for any suggestions in their report. I

would surrender all the bonds and all the interest on them before I would secure them by the exercise of authority in violation of the obligation of contracts. The grants of power to the Federal Government, though of great magnitude, were confined to general objects affecting all the people, such as war, coinage, taxation, commerce, and the like, and Congress was authorized—

> To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all others vested by this Constitution in the Government of the United States, or in any department or officer thereof.

There was no authority given anywhere for any department of this Government to violate the obligation of contracts, and that power was neither necessary nor proper for carrying into execution any of the powers granted. The States took care that there should be no mistake as to the limitation of Federal power, by declaring in the tenth amendment that—

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

And they had all agreed that such laws should be prohibited as contrary to the first principles of the social compact and to every principle of sound legislation.

Mr. Madison, in further discussing this proposition and maintaining the wisdom of it, in the Federalist, No. 45, says:

> The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the state.

Mr. President, I have said this much on this subject, although I know that the bill of the Judiciary Committee contains nothing and the proposition submitted contains nothing which violates the obligation of contracts; but I wish to exclude all possibility of a conclusion that I recognize any such right in the Federal Government in its dealings with citizens or corporations whose rights are equal—no, not exactly. The private citizen may rightfully do anything which the law does not prohibit; the corporation can only do what it is by law expressly authorized to do; but in their respective spheres their rights are equally protected.

The Government can of course by legislation affect all obligations, and can make and repeal laws which in their operations enrich or ruin citizens and corporations, and no private rights can restrain or control such legislative action. We cannot change a tariff or internal-revenue bill without having that effect. All limitation laws change the obligation of contracts in a very important sense, and all new remedies do the same thing. The obligation of thousands of contracts may be impaired or destroyed by congressional enactments. Congress is presumed to look to the public interest and the general welfare. The rights and contracts of individuals must be determined and controlled by the changes and alterations of law demanded in the opinion of the law-making power for the welfare of all. Embargoes, blockades, non-intercourse acts, to say nothing of the effect of actual war, foreign or civil, are familiar illustrations. What I contend is, that when this Government makes a contract with any person, natural or artificial, and that person performs faithfully his part of the contract, the Federal Government has no more right to violate the obligation of the contract than a State or an individual has. To

illustrate: If I contract with the Government to build a custom-house at Chicago, a post-office at New York, or a court-house at Cincinnati, and perform the contract on my part faithfully, the Government is bound, by every obligation that can bind a State or a citizen, to perform its part of the contract, and it is equally bound by any contract it has entered into with the Union Pacific and Central Pacific Railroad Companies. It will never be released from its just obligations to either of them by my vote, nor will I even admit that it has the right to be so released, and I shall insist with equal earnestness that the railroad companies shall not evade nor escape from their obligations to comply with their contract to the Government. Of course, before rights are vested under any Government contract, a repeal of the law would vacate it, if the repeal took place when the contract was partially executed. Congress or the Court of Claims would adjust the amount due to the citizen. We have no questions of that sort here, and Congress, in the charters it granted, in the gifts and loans it made to these companies, recognized the fact that it was necessary, in order to prevent all misunderstanding as to the rights of the parties, to insert into the contract and make a part of it the section reserving to Congress, without consulting the companies, the right at any time to alter, amend, or repeal the acts making the loans, donating the lands, and granting the rights and privileges therein provided for.

The decision in the Dartmouth College case had induced several States to incorporate into their constitutions provisions prohibiting the granting of charters to corporations unless the right to alter, amend, or repeal them was reserved; it had become a common provision in such grants by all the State Legislatures: the courts had determined the true meaning and effect of such reservations, so that neither the States nor the companies were in doubt as to the rights, powers, and duties of each under charters containing such reservations of power. It is mere folly to contend that such reservations of power in Congress or the State Legislatures mean nothing; that States like New York and Ohio were inserting useless and meaningless provisions into their State constitutions; that the decisions of the courts, State and Federal, sustaining and enforcing legislative acts, exercising authority under their power to alter, amend, and repeal charters, are mere *brutum fulmen*. And it is equal folly to contend that the power to alter, amend, or repeal the act did not mean the act, but only a part of the act.

When the acts of 1862 and 1864 were passed the full force and effect of the rights reserved to and by Congress were thoroughly understood by Congress and the companies, and were of course recognized and accepted as part of the contracts, just as much, Mr. President, as if I should borrow $10,000 from you and give you a mortgage on my farm to secure it, and in the contract between us I further agreed that you should have the right, at any time you saw fit to demand it, to require an additional mortgage on my house and lot, or, failing to do so, you might rescind the contract and demand your money and interest at once. The court would enforce your right to have the additional security, or compel me on refusal to pay the money.

So in the case under consideration Congress reserved the right in the contract to alter and amend it at any time or to repeal it at pleasure, with or without reason assigned, and the companies, relying on the wisdom and the justice of Congress, accepted the terms; so that there is, as I said, no pretense that we would violate any obligation of our contract by passing the bill proposed by the Committee on the

Judiciary. It is remarkable principally for the moderation of its demands and the care with which the alterations and amendments it proposes guard all vested rights and the tenderness it exhibits for the interests even of the stockholders or corporators. The corporation is made up of stockholders. The directors are their servants and agents. They are the contracting parties, the persons with whom we made the agreement, and who are bound by the terms of the acts of 1862 and 1864. Their only vested interest is the residuum of the corporate property after all the debts are paid. Yet, as I think, at the risk of loss to the United States, the largest creditor, the bill is specially careful to give at least three-fourths of the net profits, which we might demand to be held as a sinking fund, to the members of the corporation for their own use. The only vested right which the stockholders have in all the property of these corporations is, as I said, to receive and hold the balance after the debts are paid. Creditors, as such, have vested rights which Congress cannot—certainly ought not to—interfere with, which this bill protects in every form. The people of the United States have a vested right to the payment of the debt and interest which these corporations owe them, and it is our duty to see that that right is protected and secured and to see that the rights of other creditors are not put in jeopardy. They were not parties to the contract, and all the rights acquired by them before Congress exercises its right to alter, amend, or repeal the grants ought not, I insist, to be interfered with by any act of Congress.

It has been urged here that the power claimed by this bill could with equal propriety be exercised to divest the first-mortgage bondholders of their priority. It is sufficient answer to say that no such power is claimed, and I believe the courts would declare the act unconstitutional if it was attempted. All rights of third parties acquired in good faith under existing laws are sacred, and this bill proposes to hold them so; it deals solely with the parties the Government contracted with, the corporators, and requires a portion of what they are now appropriating to their own use to be held in reserve for the protection of their creditors, and this is called fraud, oppression, and monstrous injustice by the zealous advocates of these corporations even in the face of their avowals that they do not intend to pay these debts, and are preparing to make their avowals good by a division of all their assets in order to be insolvent when the debts fall due, with ample means now to secure payment of all they owe. I never heard these epithets applied before to trustees who were, without any personal interest, making an honest effort to secure an honest debt for an otherwise unprotected and defenseless people from rich and profligate debtors who were squandering their estates for the express purpose of avoiding the payment of their just debts.

I confess, in view of the well-known history of these corporations, their Credit Mobiliers and construction companies, the false statements made as to the cost of their roads and the millions of spurious stock on which vast dividends are regularly paid, which represents nothing but the fraud that issued it, the withholding of the 5 per cent. of net earnings for many years after they had obtained our lands and bonds, and the subterfuges they have continually resorted to for the purpose of swindling the tax-payers of the country, from whose sweat and toil all these millions have been wrung, and in the face of the avowals that they intend to continue to take all, and save nothing to enable them to pay their debts, that it amazes me and alarms me to hear honest and able men in this body insist, and insist vehemently, that the effort we are now making to save something

for the people, and to prevent the consummation of avowed frauds and breaches of contract, even when Congress on the very face of the contract reserved the power to do so, is a wrong and an outrage on the rights of these companies. I have long thought that the day was not far distant when the question would have to be settled whether the railroad corporations controlled Congress or Congress regulated them. This will perhaps be a test case; we could not have a better one. If they have power to defeat this proposition I see but one remedy left, and that is to repeal the charters and distribute the assets. The right to repeal cannot well be denied; it has been too often exercised and sanctioned; we can get something now out of the wreck; we will get nothing but corporation domination if we submit to the defeat of this bill. The Supreme Court at the present term, in the case of Shields *vs.* The State of Ohio, after sustaining fully such legislation as we now propose, among other things, said:

> Where an act of incorporation is repealed few questions of difficulty can arise. Equity takes charge of all the property and effects which survive the dissolution and administers them as a trust fund primarily for the benefit of creditors. If anything is left, it goes to the stockholders. Even the executory contracts of the defunct corporation are not extinguished.

Mr. President, I said I was not in favor of any harsh measure. I am not. I would do these companies no injustice, but they must be made to obey the law, secure their just debts, and submit to the legitimate authority of the Government, and I would repeal their charters and dissolve their powers and those of all like corporations before they should either cheat their creditors or dictate to Congress what its rights and duties are. I am not going to cite authorities in detail to support my views; the books are full of them; you can hardly lay your hands on a volume of reports of decisions, State or Federal, in the last fifteen years without finding a case sustaining the principles of the Judiciary Committee bill. I hold in my hand 15 Wallace Supreme Court reports; it contains three decisions from which I will read brief extracts; they have all been referred to before in this debate by the distinguished Senator from Illinois [Mr. DAVIS] and other Senators; several of them go much further than we propose to do now. In the case of Tomlinson *vs.* Jessup, a railroad corporation was created and its charter provided that it should be forever exempted from taxation.

The company organized. The road was built under that provision of law, or contract—call it what you will; all its rights were complete and vested under that agreement; but the provisions of the State constitution were that the Legislature might at any time alter, amend, or repeal all charters granted to railroad companies. It was by a subsequent act taxed heavily. The case came before the Supreme Court of the United States and Mr. Justice Field, delivering the opinion, among other things, said:

> Immunity from taxation, constituting in these cases a part of the contract with the Government, is, by the reservation of power such as is contained in the law of 1841, subject to be revoked equally with any other provision of the charter whenever the Legislature may deem it expedient for the public interests that the revocation shall be made. The reservation affects the entire relation between the State and the corporation and places under legislative control all rights, privileges, and immunities, derived by its charter directly from the State. Rights acquired by third parties, and which have become vested under the charter, in the legitimate exercise of its powers, stand upon a different footing; but of such rights it is unnecessary to speak here. The State only asserts in the present case the power under the reservation to modify its own contract with the corporators; it does not contend for a power to revoke the contracts of the corporation with other parties, or to impair any vested rights thereby acquired.

Nor does the bill of the Judiciary Committee. It deals only with the corporators. It does not even require them to do anything they did not agree to do by the contract, but simply provides that the property they are now taking and applying to their own use shall not be squandered but shall be held carefully, properly, and profitably for them without charge, so that it may accumulate for their benefit, to enable them to pay the debt which they are now seeking to avoid the payment of.

The case of Miller *vs.* The State, 15 Wallace, has been cited over and over again. The reserved power it was declared might be exercised, and to almost any extent, to execute the legitimate purpose of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors, and for the proper disposition of the assets. In Holyoke Company *vs.* Lyman, 15 Wallace, 500, the court holds that—

> The provision of the revised statutes of Massachusetts, chapter 44, section 23, and general statutes, chapter 68, section 41, declaring that acts of incorporation shall be subject to amendment, alteration, or repeal at the pleasure of the Legislature, reserves to the Legislature the authority to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the Legislature may deem necessary to secure either that object or other public or private rights.

At the present term of the Supreme Court this question was fairly presented in the case of Shields against the State of Ohio. The Lake Shore and Michigan Railroad Company refused to obey or conform to an act of the General Assembly of the State of Ohio, passed in 1873, which provided that railroad companies should not be allowed to charge over three cents per mile for passengers traveling on their roads over eight miles. Before that law was passed the directors had the right by their charter to charge whatever they deemed reasonable, and their charges exceeded three cents a mile. The constitution of Ohio adopted in 1851 gave the Legislature power to alter and amend railroad charters. The court held that the act was a valid and proper exercise of legislative power and authority. Justice Swayne, in delivering the opinion of the court, said:

> It is urged that the franchise here in question was property held by a vested right, and that its sanctity as such could not be thus invaded. The answer is, *Consensus facit jus.* It was according to the agreement of the parties. The company took the franchise subject expressly to the power of alteration or repeal by the General Assembly. There is therefore no ground for just complaint against the State.

In the case of Pick *vs.* Chicago and Northwestern Railway, 6 Bissell's Reports, 181, Judge Drummond rendered a decision to the same effect, the constitution of Wisconsin giving the Legislature the right to alter, amend, or repeal charters. I might cite case after case from the supreme courts of the various States sustaining acts of their Legislatures altering, amending, and repealing all sorts of charters, under powers precisely analogous to those reserved by Congress in the acts of 1862 and 1864, in its grants to these companies, but I will not detain the Senate by doing so.

Pierce on the Law of Railways, page 36, states the principle thus:

> The power to amend, alter, or repeal the charter may be reserved by the Legislature by a provision to that effect inserted therein, or in a general law declared applicable to all acts of incorporation afterward passed; and the right of the Legislature to alter or repeal the charter is thus made a part of the contract. The charter of the company is, by such a reservation, subject to any reasonable amendment or alteration which the Legislature may make, and any reasonable additional obligations may be imposed on the company. Thus, it may be required by virtue of such reservation to abandon the use of steam-power in propelling its cars through cities, or to raise or lower highways where its track crosses them, when directed

by the municipal authorities. The Legislature under this power may increase the liability of the stockholders, who will not thereby be exonerated from liability on their subscriptions for stock. The subscriber has been held not to be released where the Legislature, in pursuance of such a reservation, granted to the company the power to change its route. There being a general statute of Missouri reserving the power to alter or amend acts of incorporation, an act of its Legislature making companies previously incorporated liable to laborers employed by contractors for the work done by them on their roads has been held constitutional.

The principle is, that where a contract is made (placing the right on the broadest terms of contract) and the Legislature reserves the right to alter, amend, or repeal the act, that is as much a part of the contract, as Judge Swayne said in the case of Shields *vs.* Ohio, as any other part of it. *Consensus facit jus.* "You agreed to it; you acquired rights under it; you gave us the authority to change it; you cannot say that the Legislature had no power to change it."

The ultimate right to determine the constitutionality of all acts is rested in the courts. The bill we seek to pass provides for that; the Attorney-General is required to enforce our rights by judicial authority, and the companies can be fully heard. In view of the well-settled principles I have read, they do not want to go there under the proposed law; hence this struggle.

Mr. President, the bill which seems to shock the advocates of these companies is in full accord with the object and spirit of all legislation. One of the objects for which Congress convenes and for which Legislatures assemble is by appropriate acts to so alter and amend existing laws as to enable creditors to secure the payment of their just debts from dishonest debtors. New laws are enacted to that end every day. All the legislation which authorizes the seizure of the property of absconding debtors, of men who either have conveyed or are about to dispose of their property with the purpose or effect of hindering and delaying their creditors, are of recent origin. They apply equally whether the debts are due or not due. Attachment for rent not due is a familiar case. It is not many years since choses in action could be reached by legal process. In short, remedial legislation has to keep pace with the ingenuity of dishonest men, and remedies adequate and commensurate must be furnished by amending the laws. Every right must be protected or it is of no value, and punishment must follow violations of law or the law is useless.

We are told that there is no actual default by these companies and therefore we have no right in equity to proceed against them. Grant that to be the present state of the law as claimed by the Senator from Georgia, and it only proves the imperative necessity of the passage of the law we propose in order to furnish a much-needed remedy in such a case as this. There can be none of the hardships so loudly complained of in protecting the rights of honest creditors. When the history of these corporations is considered and the bad faith they have kept with this people ever since their organization is considered, the treatment they have received at the hands of Congress has been lenient and forbearing in the extreme.

In 1868 and 1869 when the Credit Mobilier developments were brought before Congress and such a state of things as was shown in the Poland and Wilson reports was proved to be the undoubted fact, would any man have denied that Congress had the undoubted right to say "we will absolutely repeal this charter because of the shocking dishonesty of the corporators and their agents; we granted it for a great purpose; we intended it to be organized and conducted honestly and in good faith to secure these great ends; you have perverted all the objects of it and are seeking to rob the people whose

money is your capital; true you have built the road, but you have issued over $36,000,000 of stock to men who are not entitled to more than a third, if to any of it; you are dividing the profits of the road among them when they have no right to them and are by giving out false obligations destroying our security; you are seeking to corrupt Congress; the very fountains of justice are being polluted by you; you are unfit depositaries of a trust of this kind and we will repeal it." Is there a court in the country that would have questioned the right to do it? I answer, not one.

I know of no higher evidence that Congress does not intend to deal harshly with these corporations than the fact that it has dealt so mercifully with them in the past; the fact that the Judiciary Committee bill is so careful to do nothing which can by possibility be tortured into a suggestion that they are being oppressed is the strongest evidence that this Congress does not intend to do anything harsh or oppressive; I confess under such circumstances I regard it as impertinent for them to come here and insist that we are violating the obligation of contracts by changing the law in order to prevent them from stealing our money; of course we are changing the law because swindling corporations have settled upon a plan to circumvent the law as it now stands, so as to rob all their creditors and defeat the objects of the Government in the grants, gifts, and loans made to them. We (I mean of course Congress) assumed at first that they would act honestly, and so trusted them, but took the precaution to guard against dishonest conduct by reserving the power to alter, amend, or repeal the contracts as events might develop the necessity for such action.

The time for prompt action has come, if Congress does not intend to surrender all the rights of the people. These men almost avow that they intend to violate their contract and destroy the vested rights of this people to the extent of $122,000,000, a sum larger than was spent for the support of this Government from 1789 to 1812; and we as trustees for the people would be co-conspirators with them if we did not so change the law as to prevent the consummation of this fraud on the rights of the tax-payers of this country whose money and property they have obtained, and whose money they avow they intend to use for their own purposes and never pay back a dollar of. Shall we stand with our arms folded and see all these great wrongs perpetrated? I trust we are not yet such abject slaves of these railroad kings.

It was said by the Senator from Ohio [Mr. MATTHEWS] the other day that by the act of 1873 we had given up all our power to amend or repeal former acts, and had thus lost our rights. When the decision in 1 Otto was read, it showed conclusively by the emphatic language used in the decision of the court that no such idea was ever thought of, but that the reverse was true, and he had to abandon that position. The distinguished Senator from Georgia [Mr. HILL] the other day, to the amazement of everybody, insisted that the act of 1871 ordering payment of the one-half transportation was a re-enactment again of the act of 1864, without the reservation contained therein, and therefore the power to alter and amend no longer existed. It was a strange straining for help to support a bad cause.

There are Senators on this floor who were here at the time that act was passed. I have the RECORD lying before me and have examined the debate then had. The proviso "that this section shall not be construed to affect the legal rights of the Government or the obligations of the companies, except as herein specifically provided" was inserted at the suggestion of the Senator from Ohio, Mr. Sherman, to

prevent the possibility of such a construction being given to the act. The companies came before us pleading that they were struggling to make a start, that they were poor, that they would be greatly embarrassed if the money was withheld, and that the great objects to promote which we had given them the grants and gifts and loaned our credit would be endangered, if not lost, unless they were relieved. Attorney-General Akerman had decided against their right; not very high authority with me, I confess. Some very distinguished lawyers in the Senate and in the other House had taken the same position; but the Judiciary Committee, on resolutions submitted to them for ascertaining simply what were the rights of the companies under existing laws, through Mr. Carpenter made a report, and an able one, stating that in their opinion, under the law as it then stood, the companies had the right to have the money paid over to them; and Congress passed a law ordering it to be so paid, and that is all there was of it. The RECORD shows it; the reports of the committees show it; the debates in both Houses show it. It stands on the face of the act self-apparent. Therefore my astonishment at the position of the Senator from Georgia in answer to the Senator from Tennessee, which was as follows:

Mr. BAILEY. Will the Senator point out in what particular the act of 1871 alters, amends, or repeals the act of 1864?

Mr. HILL. It re-enacts. Gentlemen will not understand me. In the act of 1864 you enacted a right with a reservation, and you claim the right to change it by virtue of that reservation. In the act of 1871 you enacted the same right without reservation. That is the point; and I defy any lawyer to get over it. Is not the right without a reservation an amendment and improvement upon a right with a reservation? Is not an absolute right better than a qualified right?

I have tried to avoid entering into any discussion of this question beyond what was required by the facts in the case, and I have tried to speak of it as if it was a question of contract and nothing else. I have no ill-will against these corporations. As I said, I would not, no matter what they had done in the past, injure them or diminish their usefulness in the future. When they undertook the building of these roads there was a great public necessity for the work. The Supreme Court of the United States, in the opinion in the case in 1 Otto, states it very well; but it might have said much more, and might have shown that the purposes and objects of Congress gave these corporations quite as much of a public as of a private character. Military and post roads and post-offices had to be established and maintained across the continent, communication had to be kept up with the then distant States on the Pacific, and our commerce on that great ocean was at the mercy of foreign powers. Many of the privileges granted, gifts and loans made, could not perhaps be justified now, and may have been even then a strain upon constitutional power, but the position was as anomalous as the powers and grants were extraordinary; and the condition of things must be considered when the action is criticised. War was flagrant, a great civil war, which looked to the dismemberment of the Republic. The leading commercial nations of the world, envious of our growing greatness, were looking on, and without genuine sympathy for either side were glad to see the work of destruction progressing.

Great Britain, with the selfishness and far-seeing sagacity which has always characterized her and which has made her what she is, was appropriating to herself the ocean commerce of the world. We had up to 1861 been her most formidable rival. Before 1864 she had succeeded in obtaining almost complete control of the North and South Atlantic, the Mediterranean, and the Indian Oceans. She was consoli-

dating and securing her power in India, excluding all competitors by obtaining or coercing exclusive rights to build railroads through Turkey and Persia by the valley of the Euphrates; she stood prepared and has succeeded in securing control of the Isthmus of Suez Canal; she had then and now, I believe, every coaling station on both sides of the coast of South America by treaty with those powers, so that neither we nor any other nation could without her consent sail a steamship from our Atlantic or Gulf ports to our possessions on the Pacific Ocean, far less maintain either a fleet or a commercial marine there. The apprehension of English statesmen that we would reach and control the commerce of China, Japan, and Eastern Asia, and the great islands of the Pacific from our western coast was the main cause of her desire to see our commercial greatness and unity destroyed.

She had no genuine sympathy outside of interest with either side in our great struggle. I need not tell of the millions she spent during those years in building railroads in India, nor of her gigantic efforts there, in Abyssinia, and elsewhere to produce cotton and thus become independent of us in obtaining the great staple upon which her manufacturers depended; nor need I show how like a great spider she had extended her web to catch all the prey that was afloat in the world. She had Halifax on one side of us and Bermuda on the other; with Gibraltar and Malta she owned the Mediterranean; with St. Helena, the Cape of Good Hope, and the Mauritius she controlled the South Atlantic and the Indian oceans, and the mouth of the Bosporus and the Baltic were sealed up by her and her retainers. If we remained united and our Pacific coast was open to our use her lucrative trade with Eastern Asia was in danger in its only vulnerable point, and it was about all we could surely look to in the near future for which to compete on a large scale.

Other nations were adding to our embarrassments. France, in defiance of our much vaunted Monroe doctrine, had sent great armies to Mexico and sought to establish an empire there; in short, it was painfully apparent that unless we succeeded in building and maintaining a transcontinental railway through our own territory beyond the reach of British ships not only was all trade and commerce on the Pacific Ocean an impossibility without her consent, but all the great States and Territories west of the Rocky Mountains were not only left without the protection they were entitled to demand, but they could at any time, if so disposed, defy Federal power and authority. Therefore, looking at the whole question as it appeared in 1862 and 1864, these enterprises partook largely of a public character, and as such were expected to be under the control of the Government for all its purposes, and subject to its orders. That may have induced the granting of such vast powers under these extraordinary circumstances. But I do not care to inquire into any of the acts then done, nor do I inquire what rights the Government may have under and by virtue of its paramount and sovereign authority over such military and postal highways; it is enough for my purposes to show that the right to alter, amend, and repeal the acts at pleasure was expressly reserved to Congress in the face of the grants—not the right merely to repeal, alter, or amend the chartered rights, strictly speaking, but the language is the right "to alter, amend, or repeal this act," the whole act, and every provision of it—to take back anything that was mismanaged, misapplied, or misappropriated. The companies agreed that that might be done, took these rights, and accepted them with that distinct understanding and agreement nominated in the bond.

It seems to me there can be no doubt about that. It has been argued that we acquired great benefits from these roads. We did. It was a regal undertaking, and we paid for it with princely liberality. Independent of the postponement of our vast debt to a private debt of $54,000,000 we gave them, as the Judiciary Committee show in their report, coal lands alone, as their directors say, larger than all the anthracite-coal fields of Pennsylvania—coal that they can now obtain in inexhaustible quantities and put upon the road at $1.29½ a ton, and they are doing it, as our directors' report shows. We gave them twenty-one million one hundred thousand acres of land, or over thirty-three thousand square miles—more territory than is contained in the six States of Massachusetts, New Hampshire, Rhode Island, Connecticut, New Jersey, and Delaware, all of the vast domain being within ten miles of a great transcontinental line of railroad—more, I repeat, than six States represented by twelve Senators on this floor; and if these railroads are allowed now to defy our power they will perhaps in a few years have more than twelve Senators themselves. It is suggested to me by my friend the Senator from Ohio [Mr. THURMAN] that we gave them the right to all the material they wanted off the public lands and the right of way besides. Therefore I say we have paid, independent of the debt we seek to secure, for everything these corporations have done, and paid for it most lavishly. Perhaps our gifts in lands and other things are worth $100,000,000. As the Senator from North Carolina [Mr. MERRIMON] now suggests to me, the territory is an empire of itself; and surely they ought to be required, when they solemnly covenanted to pay their debt to us, to so use their means as to make it reasonably certain that they will do so.

Complaint is made that we require them to pay the money for the sinking fund into the Treasury of the United States, the Treasury of the creditor. It is their Treasury as well as our Treasury. This Government is a representative Government, and these corporations and their individual corporators are as much part of it as any member of the Senate or House. Long before these bonds mature every member of the Senate will perhaps have passed away, from this place at least. Other men will be here, but they will only be the representatives and trustees of the people, the representatives of the taxpayers, as we are; and the Treasury of the United States is the Treasury of all of us. Can there be any other place as safe? Will the corporations themselves ask to be allowed to hold it? Nobody would suggest that. Can a better place be suggested? Will not the fund be held sacredly? If it is invested in the bonds of the United States and the interest is compounded as rapidly as it is collected, so as to realize a sum equal to the interest we are now paying, how can they object if they intend to be honest? All they are entitled to is the corporate property and its profits after the debts are paid; they knew that when they took the stock. This will be a fund accumulated for the purpose of paying those very debts so as to increase the value of their property. But it seems as though these directors do not desire that the property should increase in value, do not intend that it should be kept up in perpetuity, but that they shall, when these debts fall due, have the power to force its sale and buy it in for perhaps the first-mortgage debt or less, knowing that we will never consent to run the roads ourselves, that nobody will ever pay our debt, and that there will be no fear of the men who now own the first-mortgage bonds combining against them, as they will take care to be the holders of them.

Mr. President, I have said all I desire and more than I intended to

say on that subject. I know and fear the power of these great railroad corporations, and my apprehensions were increased by the speech made the other day by the Senator from North Carolina [Mr. MERRIMON] whose cool judgment and judicial training seldom allows him to use severe language. Among other things he said:

> Mr. President, I do not hesitate to declare my conviction that one of the great, rising public dangers in this country now is the undue, ever-increasing power and influence of corporations over the material, moral, and social interests of the people.
>
> This subject ought to attract a large share of public attention and engage the serious consideration of every legislative body. I do not underrate the advantages and benefits, public and private, of railroad corporations. I recognize them. I am not hostile to them. I would not, I will not hesitate to protect them in all their just rights, but I see and know and appreciate the high importance of keeping them well guarded by proper legislation and in subordination to government. They have great capacities for evil as well as good. They are close to the people and affect them materially in almost all the relations of life. Much the greater part of the evils to which I have made reference have been the fruits of the vicious practices of railroad corporations and their agents. Every intelligent observer knows that they have in large measure dominated the industries, the trade, the travel, the commerce, the legislation, the public men, and the press of this country. Not infrequently they have debauched members of Congress and members of State Legislatures; they have repeatedly subsidized numbers of powerful newspapers; they have set up and pulled down public men; they have walked boldly and insolently into the Halls of Congress and undertaken to dictate measures of legislation. Nay, sir, if one may trust what he reads almost daily in the newspapers and hears on every hand, their agents and lobbyists throng the corridors and lobbies, and have for months, of this Capitol, in reference to the very measures now under consideration.
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> Sir, are these things true? Are they substantially true? Alas, they are too true! The mind sickens with disgust at the thought of them! The recital of them must fill every honest man with indignation,

That is a terrible arraignment. My apprehension is, it is only too true.

In my judgment, those corporations believe that they are almost omnipotent, and they are gathering around these corridors and in our galleries and lobbies everywhere, believing that they can convince all men that they have power to make and unmake Senators and Representatives; a large and influential portion of the press belongs to them, and they are now insolently demanding that they shall not be required to secure any of the people's debt, but shall be allowed to go on and use the roads, with all the profits of them, for their own benefit.

The Senator from Ohio [Mr. THURMAN] said truly the other day that the time perhaps had come when it was to be determined who were the strongest, the people or the corporations; and he expressed great faith in the power of an awakened people. I say to him and to the Senate that the fact is being rapidly developed that the people of this country intend to rise above all corporations and assert their rights against and their power over them; and the public man who thinks that any corporation, however rich or powerful, is going to control this body, and put down this people and sustains them in their efforts to do so, will be snuffed out like a candle, and he ought to be. We are the trustees of the people, and it is our solemn and sworn duty to protect their rights against all the combinations of wealth and power, and when a constitutional, honest, fair measure is devised and presented, whereby we can protect them and do no injustice to anybody, it behooves us, if we intend to be true to ourselves and true to the great trusts we represent, to see to it that they are protected. Believing that the Committee on the Judiciary have accomplished that purpose in an entirely proper and judicious way, I shall take great pleasure in supporting their bill.

Mr. COKE. Mr. President, I ask that Senate bill No. 104 amending section 1661, title 16, (The Militia,) of the Revised Statutes of the United States be now taken up for consideration. That bill was made the special order for to-day.

The PRESIDING OFFICER, (Mr. ROLLINS in the chair.) The Senator from Texas asks that the bill at present under consideration be informally laid aside and that Senate bill 104 be now taken up for consideration.

Mr. COKE. I ask that the amendment be read.

The PRESIDING OFFICER. Is there objection to laying aside informally the pending bill and taking up Senate bill No. 104?

Mr. CHRISTIANCY. I hope that will not be done. I have a few words to say on this bill, and may as well take this opportunity as put it off and prolong the discussion until to-morrow.

The PRESIDING OFFICER. The Senator from Michigan claims the floor on the pending bill.

Mr. COKE. Of course I give way.

Mr. CHRISTIANCY. Mr. President, I wish to reply very briefly to the argument of my friend the Senator from Georgia [Mr. HILL] upon the question of power involved in the bill from the Judiciary Committee, so far as I think it important that a reply should be made. I shall be very brief. If the premises upon which he reared his argument be correct, I grant that his argument was an able one; and whether, upon that hypothesis, I would agree with him in his conclusions, I shall not now stop to inquire. My effort will be to show that he is mistaken in his premises, and that these have no foundation in fact or law. And if I show this, I may spare myself the trouble of proving what all will at once admit, that all logical conclusions drawn from such false premises must themselves be as false.

The Senator, after some preliminary remarks, lays down four propositions as the basis of his argument, which I will read:

> First, by the act of 1862, Congress created a corporate being, a body-politic, and named it the Union Pacific Railroad Company.
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> Second, this corporate being, thus created, Congress endowed with all the powers, privileges, and franchises usually granted to corporations, and especially authorized and empowered it "to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph, with the appurtenances," between designated points.
>
> Third, to this being, thus created and endowed, the Congress also granted certain privileges, such as the right of way through the public lands without compensation and through other lands with compensation, and also certain property, and especially alternate sections of the public lands amounting to several millions of acres. All these rights, powers, privileges, and grants were granted, without money and without price, by the sovereign grace and favor to the child thus born of the sovereign's loins.
>
> Fourth—and I ask the Senate to mark the difference—after thus creating this corporate being and after thus clothing it with powers and with authority to contract and be contracted with, the Congress itself proposed to authorize at once a contract with it in behalf of the United States. The Congress deemed that the construction of a railroad to the Pacific Ocean would be a great benefit to the Government in the way of saving in transportation, would greatly increase the wealth and power of the people, and perhaps maintain the integrity of the Union. To enable the Union Pacific Railroad Company to construct, equip, and maintain its portion of this railroad and telegraph line to the Pacific Ocean, Congress proposed to make it a loan in bonds, &c.

Now, I wish to call attention to this point: looking at the Senator's language alone, the idea conveyed in these several propositions is that Congress first created, had actually completed the creation of the railroad company, before these various powers, franchises, privileges, and properties were conferred upon it. I should not have thought that such could be the meaning of the Senator, had he not, in answer to a

question of the Senator from Vermont, [Mr. EDMUNDS,] used this language:

> If there had been nothing done but to pass the acts, there would have been corporations created; those corporations would have been vested with corporate powers and privileges, because that is done by the direct act of Congress; but, if the acts had been passed and if nothing else had been done, would there have been any contract?

Here the idea is distinctly carried out that the simple passage of the act created the corporation.

Mr. HILL. Of course the Senator will understand that that included the acceptance of the company, of course.

Mr. CHRISTIANCY. I should infer not from the language used.

Mr. HILL. In the subsequent colloquy with the Senator from Vermont, I distinctly said so. Of course I admit you cannot force a franchise on anybody. The organization of the corporation is one thing.

Mr. CHRISTIANCY. The Senator himself clearly distinguishes between the acceptance and the charter merely; and the language, as he used it, clearly shows his idea that the corporation was created by the act without an acceptance.

Mr. HILL. Oh, no.

Mr. CHRISTIANCY. I will read it again in order to see what it is:

> If there had been nothing done but to pass the acts, there would have been corporations created; those corporations would have been vested with corporate powers and privileges, because that is done by the direct act of Congress; but, if the acts had been passed and if nothing else had been done, would there have been any contract?

Certainly not without acceptance. And the Senator continues to follow out that idea. I may have misapprehended the real meaning of the Senator; but one thing is clear, he does endeavor to establish the idea that this corporation was complete before there was any contract for loan. So much is clear, and all the rest of the reasoning is in accordance with that proposition. But, as the Senator now disclaims any idea that a corporation can be created without acceptance, I will omit what I had proposed to say upon that point.

Mr. HILL. I think in the colloquy with the Senator from Ohio [Mr. THURMAN] he made the remark, "You cannot force franchises on anybody," and I said "of course." All I mean is that the corporation is created by the prerogative power, of course by the acceptance of the grantees, without any intervention of executive agency.

Mr. CHRISTIANCY. Precisely; and that is exactly what I said; and so we agree upon that.

Mr. HILL. But the passage of the act, and its acceptance by the corporation, does not make the contract, so far as the loan is concerned; it makes the contract of franchise, but does not perfect the contract of loan; and without subsequent acts, and without actual contract, and without intervention by the executive department of the Government, the contract of loan would amount to nothing. It would be a mere proposition. That is what I meant to say.

Mr. CHRISTIANCY. I will omit, then, what I had proposed to say in reference to that point, because I see that the Senator disclaims the meaning that I thought clearly derivable from the language.

But all the provisions, as well those in reference to the creation of the corporations and those giving the rights, powers, and franchises, as those agreeing to make the loan mentioned in the Senator's fourth proposition, are all contained in one and the same act, and all took effect together as an entire act, at one and the same time upon the acceptance by the corporations.

Mr. HILL. Now, I want to call the attention of the Senator to a

clause in my remarks, so that this matter may be put perfectly right.

Mr. CHRISTIANCY. I will take the Senator's word for that. I make no question about it.

Mr. HILL. But if the Senator will allow me I wish simply to read a clause. The Senator from Ohio [Mr. THURMAN] said to me:

They did not take effect until the company accepted them, for you cannot force a grant on anybody.

That is in relation to the franchises.

Therefore, it required two to make those franchises come into being, just as much as it required two to make this loan come into existence.

Mr. HILL—

In reply—

Mr. HILL. And the point is that it requires more than two to give effect to this legislation for the loan. My point is that the corporation is created and the franchises conferred by the act of Congress, of course by consent of the other party, and that no executive agency intervened for any purpose; that it becomes complete in the parties by the passage of the act.

Mr. CHRISTIANCY. I see now what the Senator means. The Senator's fourth proposition conveys the idea that after the creation of the corporation had become complete and perfect Congress authorized it to contract and be contracted with, and now notice the change of idea to meet the argument he was about to make. "Congress," he says, "proposed to authorize a contract with it in behalf of the United States." "Congress proposed to make it a loan in bonds," &c. He then proceeds to put himself upon the ground, not that the provisions of the fifth section, in reference to the loan, created an actual contract to make the loan even by the acceptance of the company, but that it only authorized a loan to be made by the executive department of the Government; and that it was the issuing of the bonds to the company which created the contract of loan, and not the provisions of the fifth section when that became operative by acceptance. That I believe I state correctly. If not, I will yield to be set right.

Mr. HILL. I have not observed any error of statement.

Mr. CHRISTIANCY. The Senator thus makes this entire matter of the loan a kind of detached lever, a separate, independent, and subsequent contract, not contained in the act of Congress, which he calls only a power of attorney to make the contract. He thus seeks to take this matter of loan entirely out of the act. It is not, according to this, one of the terms or stipulations of an entire contract created by the act and its acceptance, and of course, if this view be correct, it did not constitute a dependent part or consideration of that entire contract, nor any part of it, and the rest of the act would be just as valid a contract with the provision left out, which he calls a mere authority to make a contract. It would not be very important to either party to the contract created by the act, it is true. For if a mere authority to the executive department to make a contract, then that department might refuse to make it. But let us see if the merely issuing of the bonds, and handing these over to the company, constituted the contract of loan. It is essential to the contract of loan that there should be a stipulation to repay in some manner. Where would this be, if the mere issuing of the bonds constituted the contract? There was no such stipulation in the bonds issued by the Government, of course. Was there, upon the issue of the bonds, an agreement taken back from the company to pay, and providing how and when payment should be made? Certainly not. Every one must at once see that both the agreement of the Government and obligation to make

the loan, and that of the company to repay it, and all the terms of the whole matter, were fixed and settled by the act and its acceptance; that these agreements and terms are to be found nowhere else, and that they constitute the entire contract in reference to the loan. This might be illustrated in a great many ways, but it is unnecessary. Is it not perfectly manifest, that what the Senator terms the contract made by the executive department under the act of Congress as a mere power of attorney, consists of nothing more or less than executive acts in the execution and performance of the real contract created by the act and its acceptance—acts which the executive department was not merely authorized, but commanded, to perform in the execution and performance of that contract? To render all this clear I here read the fifth section of the act of 1862; of course I need not here speak of the act of 1864, which in no manner alters the argument:

That for the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph in accordance with the provisions of this act, issue to said company bonds of the United States of $1,000 each, payable in thirty years after date, bearing 6 per cent. per annum interest, (said interest payable semi-annually,) which interest may be paid in United States Treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all the interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of the said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed.

The Senator seemed to find something which he thought strengthened his argument in the provision, that the issuing and delivering of the bonds should, "*ipso facto*," constitute a first mortgage. But this is only providing for the execution of the contract and what effect its execution in this particular should have by way of security. And what, let me ask, but this section and the acceptance of the act by the company, gave the effect of a mortgage to the issue and delivery of the bonds? Not, certainly, any contract made by the Secretary of the Treasury when he delivered the bonds in execution of the agreement.

If the Senator had taken the ground, that the issue and delivery of the bonds carried the contract into effect, *pro tanto*, and claimed that the right to the loan, on the terms mentioned in the act, had become a vested right, I could at least have comprehended the drift of his argument, whether I should agree with him or not.

Mr. HILL. The Senator will allow me just a moment to show that he is arguing a point about which there is no controversy between us.

Mr. CHRISTIANCY. I hope the Senator will allow me to proceed.

Mr. HILL. I never pretended that the acts of the executive department alone created a contract or constituted a contract, but I went on to show that there could be no contract without these acts superadded. I ask the Senator to just allow me to read from my remarks.

It was the act of the party under the judgment and adjudication of the execu-

tive department and the issue and the delivery of the bonds in compliance with the authority of Congress to make the contract that created the obligations and the rights.

That is what you call vested rights. That is precisely what I mean.

That is the point. Congress gives the authority to make the contracts. I grant that without the authority—

I call the attention of the Senator to this—

I grant that without the authority the contracts cannot be made, but equally the authority without the other acts makes no contract. Legislation only authorized the contracts to be made, &c.

Mr. CHRISTIANCY. Undoubtedly; but he calls the act a proposition only, though accepted.

Mr. HILL. I say it takes all these acts to complete the contract. It takes the authority from Congress, it takes the act of the party, not only to accept but to comply with the terms, and it takes the act of the executive department, all to make the contract.

Mr. CHRISTIANCY. If the Senator pleases, it took the acts of the executive department to execute the contract which Congress had made by the act and the company had made by its acceptance. That is all the answer I wish to make to the Senator.

Mr. HILL. The executive department executes the authority which the act gives; it does not execute the contract.

Mr. CHRISTIANCY. Yes; and that was executing the contract. The contract gave the companies the right on certain conditions, when they had done certain things, to demand those bonds, and the bonds were given in performance of the contract. That is all there is of that point.

Mr. HILL. It was the performance of the authority that the act bestowed upon the executive department.

Mr. CHRISTIANCY. It was not, however, the contract, as the Senator's speech clearly indicated. But on this question of vested rights, the field of inquiry, just what has and what has not become a vested right, is a very broad one, and the landmarks are not so accurately defined as to put an end to all questions which may arise. The instances I gave, in my argument a few days ago, were merely examples about which there could be no dispute. I did not then and do not now insist that there may not be rights vested, growing out of the contract, besides the right to tangible property, and especially as between the Government, on the one side, and third persons on the other, who have dealt with the company before any amendment made in the acts.

It is not even necessary in this case to claim that, after these companies had received these bonds in part execution of the contract, and while they remained in the hands of the companies, Congress could, by an amendment, require the bonds to be given back, much less that the present owners of the bonds who have purchased them before amendments could be denied, by amendment, the benefit of their first mortgage or their rights be made subject to those of the Government.

If the Senator wishes to push my argument to that extent, I am not responsible for the argument by which he attempts it. I did not and do not push it to that extent here, nor shall I enter into any controversy upon such an attempted extension of the principles I have endeavored to lay down. It is sufficient for me to show that we have power to do what is proposed to be done by the bill of the Judiciary Committee; which is, not to take back the bonds which

have been issued, nor to require the company to pay them one day earlier than required by the contract: but, under the power, at any time, to alter, amend, or repeal these acts, subject to which and conditional upon which every provision and every right stipulated in the contract was given and accepted, the power only to compel these children of the "sovereign's loins," holding their existence or rights upon this condition, and for great public as well as private purposes, to conduct their affairs as well with reference to the public as to their private interests, as well with reference to the interests of creditors as to their own interests. In short, according to the dictates of honesty and prudence, upon such honest business principles as other great corporate enterprises of this kind are conducted by honest and prudent men, by beginning in time to make provision for the payment of their debts when they shall become due, instead of putting the entire income of this great enterprise into their own pockets, leaving nothing to pay their debts when due; and this too, when, by their confession, if the business shall continue to be carried on in this way until the Government and first-mortgage bonds become due, the property will be worth less than their debts.

But, coming back now to the matter of this loan, I think I have sufficiently shown that the whole contract in reference to it (if it be a contract at all, which for the sake of the argument I admit the whole of the act to be) was and is contained in the act of 1862 as amended by that of 1864. The Senator has treated the matter of the loan as a separate and independent contract, in some way, I suppose, growing out of the statute contract. Mr. President, there are, I believe, certain animals of an inferior order, or animalcula, consisting of several sections, and having the power, by a kind of self-scission, of propagating or cutting themselves up into as many separate and independent animals as there are sections.

And the Senator seems to me to have mis aken the entire contract created by the act and its acceptance, and composed of many provisions, for a creation somewhat of that kind, with the power of propagating independent contracts in the same manner. I propose to show him that it is a being of an entirely different kind, an organism more complex and more highly differentiated, to use the language of Herbert Spencer, both as to organs and functions; and, however numerous the sections, they are all but organs or parts of one whole, and incapable of separate and independent existence; that the matter of the loan is one of a great number of stipulations in a single contract—in the entire contract created by the acts and their acceptance, and taking effect at the same time and with, and only as a part of, the entire contract in reference to this great enterprise; that it never did and never can stand alone as an independent contract. And to prove this it is only necessary to state what will be at once apparent to every one who looks at these acts, which are to be treated as the contract, (if there be any,) and it will at once be seen that, after the provisions providing for incorporation and its general nature and purposes, the whole act is made up of a great number of provisions, part of them evidently intended to secure the interest of the United States, and the others for the benefit of the company; the one set of stipulations being the inducement or consideration for the other.

So that, as in most other contracts, every stipulation has a bearing upon every other; and we are compelled to presume that the assent of both parties to the contract could not have been given if any one of the provisions had been left out. And among these is the important provision without which the assent of the United States would

not have been given and the act could not have been passed, and that is that "Congress may at any time alter, amend, or repeal this act;" not merely that portion of the act which created the corporation and gave it its corporate franchise, which the Senator from Georgia admits Congress can do under this reservation of power; not merely that Congress may, in case of a violation or failure of the company to perform the duties imposed upon it by the acts—as many corporation charters do expressly provide, and as this evidently would, if such had been the intention, unless we are to presume that Congress was incapable of finding language to express so simple a qualification.

No, Mr. President, this reserves no qualified powers, but the whole legislative power, without restriction. In other words, they reserved all their power in reference to this act which they had before it passed. They parted with none of it. Before its passage they might have inserted or refused to insert any provision they pleased, or refused to pass any act at all. And just that power they reserved, and the companies agreed to that reservation. There is therefore no limit to the power of amendment and repeal, except that such amendment or repeal cannot divest property or rights vested, as I have already endeavored to explain. And whatever doubts may be entertained as to what constitutes such vested rights or property, or whatever difficulty may be found in defining them, one thing at least is certain: and that is, that the company can have no such vested right in any provision of the contract, as such, contained in the act, the full power to amend or repeal which is thus reserved; nor can any right be thus vested which stands solely upon such provision, without some additional ground of right; for this would be to deny the right to amend any provision of the act, and to reduce the reservation of power to an absolute nullity; while the Senator himself admits that, under this power, Congress may amend or repeal the provisions giving corporate existence, or granting corporate franchises, as well as those "regulating the exercise of their powers, privileges, and franchises." And yet those things constitute the contract just as much as the provision in reference to the loan. That was decided as long ago as the Dartmouth College case.

Mr. HILL. I should like to ask the Senator a question there. Does the Senator hold that that contract of loan, to call it a contract of loan, is any part of the franchise?

Mr. CHRISTIANCY. I do not care what the Senator calls it.

> That which we call a rose,
> By any other name would smell as sweet.

It is a part of a contract contained in the charter, a part of a contract contained in those acts; and what the Senator calls a contract is simply the acts of performance of the contract.

Mr. HILL. I would ask the Senator the question if a contract to loan money is at any time, anywhere, between any parties on earth, a franchise?

Mr. CHRISTIANCY. Not between individuals, of course.

Mr. HILL. Is a contract of loan between the Government and individuals a franchise?

Mr. CHRISTIANCY. I do not care what you call it, whether you call it a franchise or anything else, it is a part of the act and a provision, subject to the power of repeal just as every other provision in the act is.

No, Mr. President, there is no other limitation upon the power to affect corporations by amendment in such a case than that which

limits all other legislative power, that you shall not divest property or rights vested, as the power to do this is vested only in the judiciary. But the Senator, like most others who have denied this power of Congress, assumes that, if the power exists, it will and must be abused and so unjustly exercised as to destroy these companies. I have endeavored to expose this fallacy before, and I only wish now to render it a little more clear and to quiet the alarm he appears to feel at the existence of such a power. Let me say to the Senator that he and I have the physical power to do a great many wicked things. We have the physical power to kick or even to kill any child we may happen to meet along the streets of this city. But, as experience has shown that we are not particularly dangerous in that way, we have thus far been allowed to run at large in the full enjoyment of that physical power, and the presumption is that we will not abuse it. The parallel is complete; and, to carry the comparison a little further, while others might justly complain of any interference with their children, I think all would readily admit the entire propriety of so far interfering with our own children as to make them conform their actions to the principles of honesty and fair dealing and to prevent their becoming dangerous either to their parents or to others. And so I think the nation may do with (to use the Senator's figure) these "children" of its own "loins."

Mr. HILL. Then you think the nation can do anything in the world provided it does it wisely and prudently?

Mr. CHRISTIANCY. I think just what I have said. I am not responsible, as I said before, for any extension which the Senator or anybody else may seek to give to what I have said.

Mr. HILL. I thought Congress, to have any power, must have a legislative grant of power. If the Senator will allow me I should like to ask him a question. I thought Congress to have that power at all must have a legislative grant in the Constitution. Now, I ask the Senator this——

Mr. CHRISTIANCY. Then let me put a question there. Does the Senator hold that Congress had no power to pass that act at all?

Mr. HILL. No, I think Congress had the power to create the corporation; I am inclined to think so, though I do not say that I would extend that power in Congress very far. I think perhaps it has power to create a corporation as incidental or necessary to carry out certain other powers; for instance, the power to make war and the power to create post-routes. I will not discuss that point now; but I ask the Senator, does he hold that Congress anywhere possesses the power to impair the obligation of any contract?

Mr. CHRISTIANCY. Where that power is explicitly reserved to alter it in the act creating it, I do hold that Congress may alter it.

Mr. HILL. Then does the Senator hold that Congress can acquire a power by reservation which it does not have without the reservation? If Congress does not find the original power——

Mr. CHRISTIANCY. Wait one moment. I answered that question in what I supposed to be the Senator's sense. He asked whether Congress had a right to impair a contract.

Mr. HILL. As an original power.

Mr. CHRISTIANCY. In his sense I answered that question, that it could do so where the power was reserved, and on my ground, which I have explained over and over again, that where the power is reserved it constitutes a part of the contract, and there the contract is made subject to it, and to amend the contract is not, then, to impair it.

Mr. HILL. Then I ask the Senator to explain to me how it is that Congress can acquire a legislative power by a reservation in its own act.

Mr. CHRISTIANCY. It does not, and I have just stated that Congress held the entire power before, and by that act it never parted with any of it.

Mr. HILL. The power, though, to change the contract now is a legislative power. I want to know where Congress gets a power by a reservation to do what it had not the power to do originally. The power which the Senator claims for Congress here is legislative power.

Mr. CHRISTIANCY. Before Congress had originally passed any act no such question could arise. I think that is evident, and when they did pass it, they passed it subject to this condition, that any provision might be amended.

Mr. COKE. Mr. President——

Mr. MORRILL. I desire to submit a few remarks upon this bill, but I do not wish to go on to-night. If the bill of the Senator from Texas be taken up informally, I will yield for that purpose.

Mr. COKE. I ask that the pending bill be informally laid aside that the Senate may now take up for consideration Senate bill No. 104.

The PRESIDING OFFICER. Is there objection to the proposition of the Senator from Texas? The Chair hears no objection to the present consideration of the bill indicated.

Mr. ALLISON. The bill is not to be put on its final passage to-day, I understand, but the Senator from Texas, I believe, wishes to submit some remarks. I have no objection, with that understanding.

Mr. COKE. The bill was made the special order for to-day, and I desire its consideration now, and that it be put upon its passage.

The PRESIDING OFFICER. The Senator desires action on the bill.

Mr. COKE. I desire action on the bill to-day.

The PRESIDING OFFICER. The Chair hears no objection, and the bill is before the Senate.

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APRIL 5, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, the pending question being on the amendment submitted by Mr. MATTHEWS.

Mr. MORRILL. Mr. President, the interests involved in the pending bills relating to the Pacific railroads are of such extraordinary magnitude that it is not astonishing that they have attracted the attention of more than one standing committee of the Senate. The legal and financial problems presented, even after the most elaborate

study, seem to afford the basis of widely different conclusions. My own conclusion will be very briefly stated, and it is that we should exercise our right, imbedded in the statutes, to "add to, alter, amend, or repeal" the charters of these companies in such a manner as not to destroy but to preserve this great thoroughfare forever for the use of the public, for the reimbursement of the United States to the full extent of its investments therein, and also for the permanent preservation of the property of the stockholders.

Can all this be harmoniously accomplished? This must be answered in the negative if the policy pursued by either the United States or the stockholders shall be to snatch all the current earnings of the companies for the next twenty years, and then leave the rest to the tender mercies of railroad wreckers. But, by a more far-sighted policy, it seems to me that the rights of all parties, moderately asserted, can be secured and the great highway thus be handed down to future generations as a public blessing, earning perennial dividends for those who may succeed to its ownership, and without fear of fore-ordained bankruptcy from excessive indebtedness.

Sound policy would seem to dictate that the United States should be a liberal rather than a harsh creditor, but not a weak nor a silly one; and that policy equally dictates that the stockholders should not be too eager for present profits; that they should forego something of immediate gains in order to preserve a long and prosperous life to their companies, and therefore that they should be willing to postpone something of fat dividends in order to diminish an indebtedness which threatens their ultimate extinction. If the vitality of the road and its obligations can be destroyed by extravagant demands on the part of the United States, it is not less certain that a continuance of the past omission on the part of these companies to provide for any reduction of their colossal indebtedness will, in twenty years, make both their present valuable capital stock, and the second mortgage of very doubtful value and possibly utterly worthless. The bare interest upon the first and second mortgages will become so ponderous and unmanageable as to swallow up all the net earnings, and from sheer necessity the property must then be foreclosed by the first-mortgage bondholders. The United States, holding the second mortgage, as a last resort, for its own protection, may be compelled to pay off the first mortgage, amounting to $57,062,192, and take the slender chances of realizing any ultimate repayment; but the capital stock of the companies would be extinguished. Of course, should the United States not intervene, and a foreclosure be pushed by the first-mortgage bondholders, many of whom are present holders of stock, the first mortgagees would become the sole owners of the whole property, and any other lien would be forever barred.

I do not propose to consider at any length the legal questions arising in the bills which are pending, but I may be permitted to say that where the right has been reserved in terms of the most radical latitude by Congress to "add to, alter, amend, or repeal" a charter granted, it would seem that Congress, beyond all controversy, must have the whole of that right, with no great limitation to its exercise save the discretion of Congress itself. The party with whom discretion is lodged must use it and no other. "To add to, alter, amend, or repeal," were each and all exclusive rights reserved to Congress and not to the courts nor to the companies. Of course I do not mean to say that Congress can annul gifts or disturb the past; but it may regulate the future and may interdict gifts made at our expense, may reform abuses, and impose any additional safeguards upon the proper

administration of the trust at its will and pleasure. Undoubtedly the Supreme Court disappointed some members of Congress—perhaps with sufficient reasons—by its decision that the interest paid by the United States annually on account of these railroad companies was a debt not due until the principal of the debt became due, or thirty years after the date of the bonds; but I do not understand that the Supreme Court have decided that upon these large sums, greater much than the face of the bonds, no interest will be due and chargeable when the principal of the bonds becomes due; nor do I understand, whether that be so or not, that the Supreme Court have decided anything only on the basis of the law as it stood at the time of the decision; and should the law be altered or amended by the legislative branch of the Government, with the approval of the Executive, it would be a gross mistake for any party to hope or expect any subsequent decision of the judiciary could be based upon anything but the law as amended.

If the power of Congress to touch these corporations were even held to rest upon the technical grounds of some default on the part of these companies, can it be said that they have been so clear in their great office as to be void of all offense? Has there been no default in the prompt payment of the 5 per cent. of their net earnings? Is it no default that they have received and issued, as has been often stoutly asserted, beyond the bonds of the United States to the extreme legal limit, their own first-mortgage bonds in excess of the amount actually required for the construction of the road, and have distributed the proceeds of this excess as though it were legitimate profits from earnings of the road—an excess, also, which must at once ascend into the bosom of the first mortgage to the prejudice and manifest detriment of the security of the United States? I do not know what the facts may be, but the charge has been made as I have stated it. Their grand subsidy was granted to secure the construction of the road, and we never contemplated an additional thirty years' tax upon our people to enable the companies to distribute munificent dividends upon unpaid-for stock. Is it no default that the law, which required the capital stock to be paid for in money at par, was notoriously disregarded?

Is it not some default that these companies have been long and regularly distributing larger dividends than they could have done except by the postponement of the repayment of the large sums paid out semi-annually on their account by the United States, and thereby steadily increasing their own indebtedness? Is it possible that there is no legal remedy for a policy of "stripping and waste" in the open and defiant grasp of dividends steadily derived from the United States Treasury to the amount of $3,423,731 annually? Cannot Congress say that dividends must cease until they can be made without an increase of liabilities? Cannot Congress meet the exigency of impending insolvency by an adequate remedy?

In the case of the Central Pacific, their resources, including those of this indirect character, have been equal not only to 8 per cent. dividends, but they have a surplus of over $10,000,000 with which they are said to be extending a monopoly by building another trans-continental railroad, upon which the United States will have neither first nor second mortgage security. With such an exuberance of means it would seem that running hopelessly in debt to the United States was wholly inexcusable, and, if they so persisted, that it would be such evidence of a purpose to incapacitate themselves for the future repayment of the debt as to justify a prompt and vigorous interference.

The original intention of the acts of Congress must be carried out; and that intention was, that the companies, if able, were to honestly pay honest debts. No one proposes to take from them an acre of granted land. No one at present proposes to interfere with their rates of freight and transportation. No one proposes to add to the number of Government directors. No one proposes to restore our second mortgage to the position it originally held as the first lien. No one proposes to reclaim the rich and extensive coal-fields. No one proposes to divert a dollar of the earnings of the road to any other use than to the strict and direct lasting benefit of the road; that is to say, to the ultimate extinction of some share of the rapidly accumulating debts of the companies. It seems to me that so far this would not be oppressive. What prudently managed corporation would not eagerly do the same thing? It would be but a slight change in the practical economy of the railroad companies, and such as might often result from a mere change in a board of directors. It is not a change of what is called the contract that is desired, but it is to ward off a fatal change threatened by the railroad companies, through a wrong and blindly selfish administration of their affairs, that is sought to be arrested. Unless the present stockholders regard a twenty years lease of the Pacific Railroad as more valuable than its ultimate perpetual ownership, free from debt, they cannot look with disfavor upon any measure calculated to diminish their indebtedness and to give them an unincumbered title to their property.

By the sixth section of the act of 1862 it is quite obvious that a greater payment than for services to the Government and 5 per cent. of the net earnings were contemplated, as will be seen from the following words:

> Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par.

But still more significant are the words which follow, by which it appears that 5 per cent. of the net earnings was only fixed as a minimum, as "the least" that should be paid, and that they might be required to pay, or might voluntarily pay, much more. The concluding part of the section reads as follows:

> And after said road is completed, until said bonds and interest are paid, at least 5 per cent. of the net earnings of said road shall be annually applied to the payment thereof.

This lets in a flood of light and shows that from the net earnings to be annually applied to the payment of the bonds, as well as the interest, 5 per cent. was not to be anything more than "the least" that should be required.

As to the question of the power of Congress to pass the bill of the Judiciary Committee or that of the Railroad Committee, there is this difference in principle, that the latter bill assumes that Congress has no power to legislate upon the subject but with the consent of the railroad companies or that we are wholly at their mercy. That bill appears to have been projected upon the idea of making the consent of the companies certain by giving them better conditions than they now enjoy. The interests of the United States appear to me to be of sufficient magnitude to warrant Congress in claiming to be at least an equal party and not inferior to the railroad companies in the determination of the questions at issue. The bill of the Judiciary Committee assumes so much, perhaps rather more, and asks no questions.

For one, I would not use the power of Congress tyrannically, nor unjustly; but this power will be evoked when extravagant claims

are presented, no matter by what astute argumentation they may be enforced; no matter how potential may be the array of private interests; and the managers of these roads, if they do not want their affairs, at some cost to themselves, perpetually sweltering in the Halls of Congress, should comprehend the point clearly, and promptly tender or accept such fair and equitable terms as would be ratified and confirmed forever by the people, and such as the railroad companies, upon "second sober thought," would cheerfully accept. Great benefits were originally expected from the road, and these, let us cheerfully admit, have been realized in far cheaper transportation service and in the stronger ligament which binds the shores of the Atlantic and Pacific together; but these benefits were the inducements prophesied, which called forth unstinted liberality in advance, and there can be no well-founded demand for compensation a second time.

Have we been liberal or not with the Pacific Railroad Companies? By looking at what has been done, all can better judge what more should be done.

First. We have given to them, as estimated at different times by the General Land Office, from twenty million to thirty million acres of public lands, not wholly of much present value, but with abundant coal-fields of priceless value, exceeding even the inexhaustible anthracite-coal fields of Pennsylvania, and affording a large and marketable product as well as a supreme element in the cheap operation of the road.

Second. We aided by lending the companies our 6 per cent. bonds for thirty years to the amount of $57,062,192, secured at the outset by a first mortgage, and these bonds now bring in the market over 18 per cent. premium. We gave our security and took theirs to cover an exactly equal amount.

Third. We consented to change the place of our mortgage security from the first place to that of a subordinate, and gave to the companies the privilege of issuing an equal amount with a prior lien.

Fourth. The whole of their charges for services in carrying the mails and other transportation accounts by the act of 1862 were to be at once applied on their indebtedness, but by the act of 1864 only one-half was to be so applied.

Fifth. In the first act all coal-mines were reserved to the United States, but in the last they were wholly surrendered to the railroads.

Sixth. We have thus far paid the accruing interest on the second-mortgage bonds (less the amount reimbursed) to the extent of $24,343,812.36. We must continue the payment of this interest as it falls due for twenty years longer, or a further sum of $66,110,620.40. Nothing of this will be due, according to the decision of the Supreme Court, until the principal is due. Simple interest upon these payments at 6 per cent. will amount to nearly or quite $70,000,000. If this also is not a debt, when we are paying 6 per cent. upon a loan of millions, then it is a gratuity largely in excess of the original bonds, and one of those things never dreamed of in the philosophy of Congress.

The account stated as between merchant and merchant, or between man and man, would show that besides lands, besides coal-mines, besides credits, up to the year 1900, we shall have aided these companies, as already indicated, to the extent of not less than $217,516,624.76. From this sum there should be deducted whatever sum has or shall have been repaid; but, if that should reach no higher figure than for the past ten years, it will be comparatively rather insignificant in

amount. Through the aid of the United States these companies have issued certificates of stock representing for the Union Pacific, $36,762,300, and for the Central Pacific, $54,275,500, or $91,037,800 of capital in all, upon which it would be a preposterous exaggeration to suppose that even 10 per cent. was ever paid at par in cash as capital; and upon this very rotund fiction the fortunate stockholders have been receiving dividends just the same as they would have done on a capital fully paid up at one hundred cents on the dollar. And yet, my friend the Senator from Ohio [Mr. MATTHEWS] is eloquently distressed at the idea of interference by Congress at any time before the dividends shall exceed 10 per cent, when, if they were to be restricted to 10 per cent. dividends upon the cash originally actually paid for each share of stock, one dollar per share instead of ten would be altogether too much for even a 10 per cent. dividend.

Here is where, as I think, there is fair ground for an equitable arrangement between the United States and the managers of these gigantic corporations. The stockholders must see that it will be for their interest in the long run to accept smaller dividends rather than to receive larger at the risk and cost of the United States, already perhaps an exasperated creditor. They might distribute 4 or possibly even 6 per cent. dividends and preserve their plant. Six dollars annually on shares costing even sixty or seventy dollars ought to make the owners contented. They have their choice: big dividends absolutely terminable after a brief period, or moderate dividends for a brief period and then larger ones in perpetuity. The Union pays 8 per cent. and the Central 8 per cent., with a very heavy and increasing surplus. The net earnings of the Union, after deducting operating expenses, in 1877 were $8,317,091.58, and those of the Central in 1876 were $9,137,004.73. Such a net revenue makes its own argument.

I know that some considerable part of these stocks have passed from the hands of the original owners, and now brings in market about $70 per share for the Union and a good deal more than that for the stock of the Central, which, being owned by a small number of individuals, is rarely offered for sale, and yet ere long I fancy, even with dividends temporarily reduced, the stock of both companies would take its place, without a peer, as the best among all American railroad stocks. The through business has by no means yet reached its maximum, and the local business, along with the rapidly increasing local population, may be expected to double within a brief time after the country shall have once more arrived at the condition of its usual prosperity. I have no doubt these companies will be able to contribute liberally to a sinking fund, and still make sure and respectable dividends, or with so little diminution as to cause only a slight and temporary depression in the price of their stock. They have been exceptionally successful and can afford, while mainly holding a stock with all the earmarks of a bonus, to be just toward a benefactor to whom they are indebted for fortunes of many millions, possibly too blindly bestowed.

But what is it that the bill of the Railroad Committee proposes to do, and which has been urged with so much pertinacity?

First. They propose that the United States shall pay, as we have paid, the coupon interest, and wait without interest until the whole debt matures.

Second. Instead of applying to their credit annually, as the law now compels them to do, the pledged 5 per cent. of their net earnings and the one-half of the transportation accounts against the Government, they propose to add 6 per cent. interest, compounded semi-

annually, to the several sums, though the largest would be interest on the actual money of the Government, and then twenty years hence to apply it with all the accretions to their credit. With that method of borrowing and of payment, fat dividends might be paid by the railroads without any other business, although it would be much simpler and far more advantageous to the United States to provide that for every dollar paid by the railroad companies they should have a credit of $2.

By the mode of computation proposed the compensation for Government services to the amount of say $600,000 in 1876 would entitle the railroads in the year 1900 to an inflated credit of more than four times that amount, or to $2,479,350.92, being $1,879,350.92 in excess of what they would be entitled to under existing law. This is not wiping out their debt with a sponge, but it is the mode of wiping it out by the bill of the Railroad Committee, and entirely a new and rare gift to the companies. The Senator from Ohio on my right [Mr. MATTHEWS] has no doubt they will accept of it. It being a new and very large subsidy, I do not think he is any too confident.

Third. It is finally proposed that the railroad companies shall add to the 5 per cent. of net earnings and to the Government transportation account a sum sufficient to make altogether an annual contribution to the sinking fund of $1,000,000, but the addition would be a supplement insufficient to offset the magnificent railroad arithmetic. The addition is a cipher only, but serves the magical purpose of hugely multiplying their credits.

It will be seen that the chief merit of this sinking fund is its semi-annual compound-interest fertility, while the semi-annual advances made by the United States are to be absolutely barren of interest. It is a new way of paying debts, by which a mole-hill overtops the mountain, and, if successful, the inventors should be rewarded with a compound-multiplying patent. If the companies are truly too poor ever to repay what they really owe, let us manfully proclaim the fact and release them to the extent of 50 per cent.; but do not let us vainly undertake to befog our constituents nor ourselves with this bald, if not impudent, system of book-keeping and arithmetic, which the merest school-boy would be ashamed not to discover reached a like result by a much less circuitous process.

As I understand it the 5 per cent. on net earnings and one-half of the services for Government transportation by the Union Pacific may be reckoned to average about $666,972. This would leave $166,514 as the pitiful sum to be semi-annually added to the sinking fund to make up the annual amount to one million, and this is the meager outcome of all the new and old advantages so hopefully tendered to the railroad companies. We are to settle and compound our debt and have very little to show for it but the pomp and sublimity of semi-annual compound interest. Beyond these telling advantages, proffered with as lavish a hand as though the railroad was yet unbuilt, there comes an appendix providing that, after the year 1900, we are to reloan to the railroad companies the same amount of capital for twenty-five years longer, to be repaid semi-annually in half-million installments, with no other nor better security and with the stipulation that no more than the lowest average rate of interest our public debt may then bear shall be exacted. If we should then owe no debt and be paying no interest, the inference might be that no interest could be charged; but with this bill as an example of our guardianship of the financial interests of the country, there need not be much apprehension that the country will be out of debt.

The bill of the Judiciary Committee may need some amendment—something less complicated and more direct might be better—and I should greatly prefer some changes that would, if possible, simplify the various propositions it contains; but I am very clear that the financial position of the United States relative to these railroad companies would not be improved by the passage of the bill of the Railroad Committee, and, rather than accept of its conditions, it would be wiser, as it appears to me, to wait until the managers of these roads—if we cannot act without their consent—find it for their interest to offer better terms. In fact, I cannot persuade myself that any of these managers could, with a sober face, ask those who are here, charged with the duty of protecting the interests of the United States, to vote for the bill of the Railroad Committee, as they must know that the cry for repeal would be sounded before the ink was dry upon the parchment. It may be true that the bill would send them along on the road to Paradise, but it is manifest that the interests of the Government would keep equal pace on the road to ruin.

Finally, if the Pacific Railroad Companies cannot keep their dividends up to the present rate and at the same time diminish their indebtedness, business forecast and reasonable prudence require the directors to make some temporary appropriation to this important end from their dividend funds. Nothing less will answer their purpose nor that of Congress; and perhaps the best thing the railroad companies can now do would be to ask their friends not to identify themselves with a bill which professedly aims to create a sinking fund but which instead proves to be only a mask to hide a fresh subsidy.

Mr. HARRIS. Mr. President——

Mr. TELLER. I should like to ask the Senator from Vermont [Mr. MORRILL] a question. I understand the Senator from Vermont to find fault with these companies for declaring large dividends on their stock. I would call the attention of the Senator to the eighteenth section of the act of incorporation, wherein it is specially declared that they are entitled to 10 per cent. on the whole cost of the road. I ask the Senator if he claims that that is repealed.

Mr. EDMUNDS. Read the section. Let us hear that special reservation.

Mr. CHRISTIANCY. Read the section, and see how much they are entitled to receive.

Mr. TELLER. The eighteenth section of the act of 1862 provides—

> That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures—including repairs and the furnishing, running, and managing of said road—shall exceed 10 per cent. upon its cost. (exclusive of the 5 per cent. to be paid to the United States)—

Then the Government may interfere.

Mr. EDMUNDS. May do what?

Mr. TELLER. Then the Government may interfere and fix the rates. That is a tacit declaration, at least, that they are entitled to receive that before the Government can interfere.

Mr. EDMUNDS. Before the Government could fix the rates; but, in the mean time, the Government wants to have this money kept to pay the debt.

Mr. TELLER. That is not the question, and I ask the Senator whether he thinks they are not entitled to dividends on their stock?

Mr. HARRIS. If there be no Senator who desires to continue the

debate upon the railroad bill this evening, I move that it be informally laid aside, and that the Senate proceed to the consideration of the bill (S. No. 855) for the relief of Warren Mitchell.

Mr. THURMAN. I have every disposition in the world to oblige the Senator from Tennessee, but I do hope if Senators wish to speak on the railroad bill that they will proceed. I gave notice last week that I would ask for a vote to-morrow. If I had not given that notice I should ask for a vote to-day. I hope that we may get to a vote; but if we are to have only one speech a day on this bill, and sometimes a very brief one, (as the very brief discussion to which we have listened this morning, and none the less instructive because it was brief,) I do not know when we shall get to a vote upon the bill. I hope, if there is any Senator who is prepared to speak on the bill now and desires to do so, that he will proceed to-day. If he does not, I am sure he cannot complain if to-morrow I ask the Senate, and ask the Senate earnestly, to bring this discussion to a close, and to sit the bill out.

I propose to offer an amendment to the original bill to be considered by the Senate. I believe the bill can only be laid aside informally by unanimous consent.

The PRESIDING OFFICER, (Mr. ROLLINS in the chair.) The Senator from Tennessee asks that the funding bill be informally laid aside, and that the Senate take up for consideration——

Mr. MITCHELL. I suggest to the Senator from Ohio, as he desires to offer an amendment, that it be offered and printed, so that we can understand what it is if the bill is to be laid aside informally.

Mr. THURMAN. I have not the amendment prepared formally, but I can state its substance in a few words, so that the Senate may understand it.

Mr. HARRIS. I submit to the Senator from Ohio that I distinctly stated that, if there was any Senator who desired to continue the debate on the railroad bill this evening, I should not propose to interpose my motion; but, if there be no Senator who desires to be heard this evening upon the railroad bill, then I hope my friend from Ohio will consent that the railroad bill may be informally laid aside and the bill I suggest, Senate bill No. 855, be taken up for consideration.

Mr. THURMAN. Of course, as I gave notice that I should ask a vote to-morrow, I cannot press the bill to a vote to-day. If there is no Senator ready to proceed, of course I shall not resist the motion made by the Senator from Tennessee.

Mr. HARRIS. I make the motion indicated a moment since, subject to the wish of any Senator to be heard upon the railroad bill. I shall withdraw the motion instantly if any Senator announces such a purpose.

Mr. INGALLS. I should like to hear the amendment of the Senator from Ohio.

Mr. MITCHELL. I was about to say that if the bill is to go over until to-morrow I should like to hear stated the amendment which the Senator from Ohio proposes.

Mr. THURMAN. I will state now the amendment that I shall offer. The third section of the Judiciary Committee bill provides as follows:

That there shall be established in the Treasury of the United States a sinking fund, which shall be invested by the Secretary of the Treasury in bonds of the United States; and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereafter mentioned. And in making such investments the Secretary shall prefer the 5 per cent. bonds of the United States, unless, for good reasons appearing to

him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States.

In opening the discussion on this bill I explained the reason why the committee directed the Secretary to prefer the 5 per cent. bonds. To repeat, and very briefly, the reasons were that the five percents are the only bonds not subject to call that will mature about the time that the subsidy bonds of the United States will mature, except the subsidy bonds themselves. But we did not think it wise to require the Secretary to invest in the railroad subsidy bonds because of the very high rate of premium that those bonds bear. Therefore we provided that he should give preference in making these investments to the five percents of the United States, especially as the five percents with compound interest upon them will make more interest than the interest which the railroad companies would have to pay upon the same amount of money thus invested at 6 per cent., they paying interest without rest and the five percents being compounded; so that perfect justice would be done to the companies by their investment in the five percents. But it has been suggested to us, and it strikes me with a great deal of force, that the difference between the market value of the first-mortgage bonds of the companies and the five percents is so little that it would be better for the sinking fund to allow the Secretary to invest in the first-mortgage bonds of the companies as well as in Government bonds, because the first-mortgage bonds of the companies bear interest at 6 per cent., whereas the bonds of the United States here mentioned bear interest at only 5 per cent. An investment, therefore, in the first-mortgage bonds would produce 1 per cent. more interest, and compounded it would produce a very considerable amount more interest than an investment in the five percents, while the security for the purposes of the sinking fund would be just as good as would be the five percents or any other bonds of the United States. I therefore give notice that at the proper time I shall move to amend the third section, so as to add the first-mortgage bonds of the companies as one of the securities in which the Secretary may invest the sinking fund.

Mr. MITCHELL. Giving the Secretary of the Treasury discretion to select the five percents of the Government or the 6 per cent. first-mortgage bonds of the companies?

Mr. THURMAN. Yes, the five percents or the first-mortgage bonds of the companies. Of course you have to give the discretion to somebody, and I think that everybody would be willing that it should rest in the Secretary of the Treasury. I have not prepared the amendment in words; it will require some little care, perhaps; but I give notice that I shall move such an amendment at the proper time.

Mr. BLAINE. I should like to ask the Senator from Ohio a question merely for information. In the way the sinking fund is proposed to be constituted in his bill, does it imply or require that the actual investments made shall themselves be retained for this purpose, that it shall be a specific fund, that these specific securities shall be deposited and their interest invested, the specific securities bought to be deposited?

Mr. THURMAN. Undoubtedly it does.

Mr. BLAINE. Suppose any accident or loss should occur to that fund, as occurred in the Interior Department with the Indian trust fund, which has never I believe been made up, upon whom would the loss fall?

Mr. THURMAN. I will say to my friend that we expect to get into power about the 4th of March, 1881, and then everything will be so honestly cared for that there will be no need of apprehension.

Mr. BLAINE. But it was under the Senator's own party that the loss occurred in the Interior Department, and it was just that possible dread that made me address the inquiry to the Senator from Ohio. I believe that nothing of that sort has happened since the republican party came into power, but it did once occur under the democratic party. Seriously, I wanted to know that, because it seemed to me that whatever you agree upon as the rate of the sinking fund the money should be paid in and should be credited to the companies. I do not know that the United States have ever held a sinking fund in any other way. The naval pension fund, which amounts to some $13,000,000 I believe, is not held in any specific bond, nor is the Geneva award fund, I believe, so held now.

Mr. MORRILL. The Geneva award was put in a single bond of the United States.

Mr. BLAINE. Not now, I think.

Mr. MORRILL. It was originally held that way.

Mr. BLAINE. As long as it was in the State Department it was; but it has now been put into the Treasury, I suppose, though the Geneva award fund is not held in specific bonds, and, if any particular bonds happen to be stolen or burned, the Geneva award fund would not be considered to have vanished out of existence.

Mr. THURMAN. If I am not mistaken—the chairman of the Committee on Finance can tell me—the sinking fund of the public debt is held in the very bonds that are purchased.

Mr. MORRILL. No, it is not.

Mr. BLAINE. I think not.

Mr. BECK. They are all canceled.

Mr. EDMUNDS. It is theoretically a specific fund, but practically it is not.

Mr. BLAINE. Does the chairman of the Judiciary Committee or the Senator who reports this bill know of any fund in any Department of the United States Government that has ever been held this way except those funds in the Interior Department which took wings unto themselves and flew away?

Mr. EDMUNDS. Yes, there are heaps of them. But it is not necessary to go into that. This bill stands upon an entirely different principle, and that is the power of Congress, under these acts, and its regulating power, as States have, according to a dozen late decisions of the Supreme Court of the United States, to regulate the transactions of people who are engaged in transacting public interests, for the benefit of their creditors, to establish sinking funds, or to accumulate money in order to do one of the things that their authority compels them to do, and that is to keep their promises to their creditors.

Mr. BLAINE. The Senator is running beyond the point. I am not touching that point at all. I am not within a thousand leagues of it.

Mr. EDMUNDS. But if the Senator asks me a question he should give me time enough to answer; it may take a week.

Mr. BLAINE. I want the Senator to answer my question, and not some other one.

Mr. EDMUNDS. That is exactly what I am doing. It is just possible the Senator cannot perceive it, but I am. The Senator wants to know why we do not consider this as a payment into the Treasury.

Mr. BLAINE. No: I do not.

Mr. EDMUNDS. So that if any bonds are lost or stolen it will not be the loss of the companies. Is not that it?

Mr. BLAINE. Yes; practically.

Mr. EDMUNDS. Very well; practically that is it. I say that the foundation of all legislative jurisprudence, (which I think is an apt term for this kind of business of compelling people engaged in public pursuits and under public power to keep their obligations all around,) is the regulation and control to compel them to do their duties to their creditors as well as to the public in carrying the freights and passengers, and so on. Now, then, everywhere, in every State, and in every civilized country, the ordinary method of accumulating money to pay off debts is a sinking fund of some sort. The sinking fund is required by courts and by Legislatures and by Congresses and so on, to be invested in the best securities that can be found to accumulate the most money where the debtor furnishes the money; but where, as under the Railroad Committee bill, the United States furnishes the money, it might be a little different thing. That being the case the people who furnish the money, and the Government or the courts that control its security, doing their best to preserve it, if there happens to be a loss, that loss, as in all such cases, must fall upon the fund, upon the debtor. That is a principle of universal jurisprudence. But in this particular case, let me say to my friend from Maine, there is not any practically conceivable danger of loss, because this investment in bonds of the United States or in the first-mortgage bonds of the company, as is now suggested by the Senator from Ohio, is an investment in bonds that as they come into the Treasury can be and should be (if you have a Secretary of the Treasury that is good for anything as we have now) so indorsed and stamped that if all the thieves in Washington, which is saying a good deal, were to get into the Treasury and carry them off, it would not do the companies a bit of hurt or the thieves a bit of good. That is a practical answer, I suggest, to my friend.

Mr. BLAINE. Then I must say that is just tantamount to keeping the books, because you do not put into the sinking fund a negotiable security.

Mr. EDMUNDS. We do not intend to do that.

Mr. BLAINE. You simply put in that which shall appear on the books as a credit, because you destroy the character of the security as a negotiable piece of paper at once. It occurred to me in this wise, that the money which is paid in under this bill, if it shall become a law, will be paid in at stated periods. It can be anticipated, I suppose, with as much certainty as any other source of revenue, for instance, though this I suppose is not to be regarded as revenue. We have a very large amount of 5.20 bonds, unhappily too large, 6 per cent. bonds in gold that are payable on call. We can call them in at any time we choose on numbers, so that every dollar the railroad companies would pay in might be used to destroy for the time being or immediately a similar amount of 5.20 bonds on which we are paying 6 per cent. interest in gold; and you might credit it to the company just as you choose. If you regard the 5 per cent. as a sufficient interest or the 6 per cent. as a sufficient interest, whatever it is you credit them with that and call it that; but it seems to me that is its state now if you put in the 6 per cent. bond of the company, which I think is a good suggestion, because there is no thing you can invest in so good as your own notes in the shape of protecting your credit. If you put that in and then the 5 per cent. bonds and then give the Secretary of the Treasury discretion, as this bill does, to run down through the 4½ or 4 per cent. bonds according to his discretion, which leaves the thing in a very uncertain attitude, you do not know exactly what it is going to be.

Of course while it is a very proper provision to put in the first-mortgage bonds, the Senator from Ohio knows even better than myself that that will at once very materially advance the value of those bonds. Nothing advances the value of any bonds so much as to have them bought for a sinking fund, and they may very soon of course be out of reach. It does seem to me that whatever you order it to be invested in, or whatever discretion you may invest the Secretary of the Treasury with in dealing with the question of the sinking fund, you ought as between the company that you are collecting the money from and the Government to agree upon a specific rate. You can very easily make it good. Whatever that rate may be in the judgment of Congress it should be specific and specified, and stand at that. Instead of hunting around for bonds at a premium, or this kind, or that kind, or the other kind, I think the wisest thing the Secretary of the Treasury can do when he receives this million or two million, or whatever it may be, semi-annually is to buy up the 6 per cent. securities of the United States, which are now out by hundreds of millions and which can be brought in on call any day you choose, and stop that much of gold interest. That is a privilege which will still be open to the Secretary of the Treasury for the next ten or twelve years, until the five-twenties are entirely exhausted. I do not know so valuable and so useful a mode in which the sinking fund should be administered, although I may be entirely mistaken in it.

Mr. EDMUNDS. I think the error, with great deference to my friend from Maine, into which he falls about this proposition is this: the duty of the United States as the trust company, so to speak, into which this sinking fund is to be paid, being the safest possible trust company, of course, is to make the most that it can as a trust company, so to speak, out of the money that is contributed by the debtor. That is a plain duty of right and of trust, as in the case of all sinking funds and trust.

Very well. Now, if my friend says then "Why do you not take the 6 per cent. bonds of the United States?" the answer is, that the Secretary, if he took those, would have the same right to call them as against the sinking fund and the companies that he has against the present holders. Just as soon as he can borrow money from the people at a reduced rate of interest he would be bound to call those very bonds. The consequence would be that you would drop down then to the lowest rate of interest at which Government securities can be got. The first business of a sinking fund is to have it absolutely safe, and therefore the duty of the person who holds the sinking fund, be he Government or bank or trust company, is to invest at the highest rate he can in a perfectly safe security, as far as human contrivance can make it safe, and of course the bonds of the United States are supposed to be that. Therefore, it does not do any good to the United States to take its 6 per cent. bonds and call them in, for the reason that just as soon as the Secretary of the Treasury can borrow that money at a lower rate of interest under existing laws he is to call them in; and it would be unjust to the United States to make the United States as the holder of this sinking fund pay a greater rate of interest to these companies than it paid to any other persons from whom it should borrow money; because in the attitude of a debtor, or a borrower, the United States has a right, and it is its duty, to borrow money at the lowest possible rate of interest. So the moment you separate the two ideas of the United States as a borrower of money upon bonds, and as the holder of a trust, and keep those two

notions separate as they ought to be, there is no difficulty in the case. The money is paid in, as this bill provides, to be invested in the best securities you can, in order to make it accumulate the most. If they can be invested in the bonds of the United States which are the highest ones of safety, then invest them in those bonds that bear the greatest rate of interest that the United States is obliged to pay. But it is not obliged as we can all see now, unless we pass some more silver bills, and so on, to pay 6 per cent. interest. It can borrow money even now at 4½ per cent., as we are told by the Secretary of the Treasury.

Mr. ALLISON. Since the silver bill passed?

Mr. EDMUNDS. Since the silver bill. The Secretary of the Treasury says so. Whether he is correct or not, I do not know; I hope he is. I hope we can borrow it at 4; I hope we can borrow it at 3, at the lowest possible sum, no matter what it is. But in respect of these companies our duty as a holder of a trust fund is simply to invest it, first, in securities that are absolutely safe, that is to say, the securities of the United States or these first-mortgage bonds, because they must be paid; but there is another difficulty about that which I will come to presently; second, to invest it at that rate of interest which will get the most money. But if the Secretary invests in United States bonds he must practically invest in those that bear the lower rate of interest; but the United States can now borrow money upon those bonds to pay off those of a higher rate.

Mr. ALLISON. Suppose he invests in the bonds issued to these companies, which are 6 per cent. bonds not payable until thirty years?

Mr. EDMUNDS. That is exactly what the Senator from Ohio has referred to.

Mr. ALLISON. I do not mean the first-mortgage bonds of the companies. I mean the bonds of the United States issued to these companies which bear 6 per cent. interest and which are not payable until thirty years.

Mr. THURMAN. Does the Senator know what rate those bonds bear?

Mr. ALLISON. They are above par.

Mr. THURMAN. Let me tell the Senator that they are 118.

Mr. EDMUNDS. That is exactly the practical obstacle, if you take a piece of paper and figure out the interest, to investing in bonds ever so good, if they bear a very high rate of premium because you are obliged to charge your trust fund with the premium you pay and to reduce the profit to the debtor who is accumulating a fund by just that much; so that the only practical thing to do is to authorize the Secretary of the Treasury, as this bill does, to do the best he can in the public securities of the United States for the benefit of this fund, or in the first-mortgage bonds of the companies, which are paramount to ours.

The only practical objection that occurs to me as to the first-mortgage bonds is as to one contingency. Suppose there are now, in respect of these companies, about $60,000,000, in round numbers, or $54,000,000 or whatever it may be of these first-mortgage bonds. Suppose the Secretary of the Treasury invests these securities in those, and at the end of the period, 1895 or 1900, no matter what, he has caught up half of them. They are in bonds, they are not in money. Some disaster that nobody can foresee comes upon all this railway business, and the companies cannot earn money enough to more than pay the running expenses and keep up the road; it is a failure as many railway companies have been. I cannot foresee that; I do not

think it at all likely to happen; but if it should, where would we be then? Here would have been a sinking fund accumulated, which, in respect of one half of these bonds that had been brought into the Treasury was very well, but how is it in respect of the other half that were outstanding and for the benefit of the holders of which this fund is accumulated, as well as of the other creditors of these companies in due order? How are you to produce equality between the holders of these bonds? You cannot take the bonds that you have bought in, which will not sell for anything in the case I have supposed, and divide them around among the other people. The consequence is that the man who has transferred his first-mortgage bonds to the Government at this rate, the present rate, at par and above, gets his full pay; the man who has not transferred, and who is entitled to be protected by this sinking fund gets no practical benefit from it. So, if you are to have a liquidation at that time and a liquidation in cash, as every liquidation must be theoretically and practically in almost every case, you cannot make a division. That is the objection to investing even for a sinking fund, except where the company itself is buying up its own bonds in the nature of payment, which is another thing—but as a sinking fund, the objection to such an investment is the possibility that at the end you will be unable to do equal justice to the creditors of that class. It may be in this instance, I dare say it is, that that possibility is so remote that practically there is not much danger in running the risk.

Mr. THURMAN. Mr. President, in regard to the last suggestion made by the Senator from Vermont, it does not strike me as being any very serious objection against the amendment that I indicated I would offer.

Mr. EDMUNDS. I have not suggested that it was, as I think the possibility very remote.

Mr. THURMAN. In the first place it is too remote a possibility, as it seems to me. I cannot conceive it possible that these two roads should ever be worth less than the principal of the first-mortgage bonds. My own opinion about them is that they will be worth a great deal more; but even if we were to suppose a case in which they were not, and in which their first-mortgage bonds would have absolutely no market value at all, and if at that time say one-half of those first-mortgage bonds constituted the sinking fund, I do not see that any particular injustice would be done by the cancellation of those bonds in the discharge of the sinking fund, because that would leave the road as a security for the remaining first-mortgage bonds, and those whose bonds had not gone into the sinking fund would be benefited and not be injured. But it is so remote a possibility that these companies would ever be unable to pay the interest on the first-mortgage bonds that I do not think it is necessary to speculate about it. If that time should ever come there will be a Congress here to take such steps as shall be necessary.

A word now in regard to the suggestion of the Senator from Maine. If I understood his suggestion, it was that the United States should take this money and not invest it in bonds or securities of any kind, but treat it as its own money and use it as its own money, paying it out for its own debts or liabilities or current expenses, but crediting it to the sinking fund and allowing a rate of interest upon it. That I understand to be the idea of the Senator from Maine. In the first place, it is perfectly plain that if the United States were to do such a thing as that, justice to the Government would require that we should fix the rate of interest at the very lowest rate that the United

States can borrow money at. Anything else would be a gift or gratuity from the United States. That is one of the objections to the bill reported by the Railroad Committee. It in effect proposes two things: one, that we shall allow interest at 6 per cent., semi-annually compounded, on our own money; and secondly, that as to the portion of the money which the railroad companies are to pay in, and which is their money, we shall allow interest at 6 per cent., compounded semi-annually, on that until the 1st day of October, 1900, a period of twenty-two years and more. In other words, that the Government shall make a loan for twenty-two years and more, diminishing year by year in point of time, and pay interest at the rate of 6 per cent. compounded semi-annually, when the Government can borrow every dollar that it wants at 4½ per cent., and can borrow in greenbacks, as the money is to be paid by these companies into the sinking fund, payable at 4 per cent., and the Government is now every day borrowing money at an average of nearly $100,000 per diem at the rate of 4 per cent. I do not know that Senators have paid attention to the fact that scarcely a day passes over our heads, Sundays excepted, when the Government does not borrow from $50,000 to $100,000 at 4 per cent. interest.

Mr. ALLISON. The 4 per cent. bonds are above par.

Mr. THURMAN. The 4 per cent. bonds are above par; they were above par in gold yesterday in New York, being at 100¼; so that it is wholly inadmissible that the Government should take this money and credit it to a sinking fund and agree to pay a stipulated rate of interest upon it higher than the Government can borrow money at. But then suppose the Government should do that; suppose I am right in that and the Government takes this money and agrees to pay 4 per cent., at which it can borrow all the money it wants. The 4 per cent. compounded annually would not be equal to the 6 per cent. without rest that the companies have to pay; it falls a little short of it. Four and a half per cent. is a little above it; 5 per cent. is very considerably above it, as the amount of interest that the Government would have to pay; but we should be guilty of the injustice, if we were to take this money and credit it with 4 per cent. interest, of taking the money of these companies and not making as much interest upon it as they are compelled to pay to us. That would not be fair to them, and there is no necessity for it.

In respect to the danger which the Senator from Maine suggested, and which I undertook to answer jocosely, and I believe got the worst of the poker in that business, the hot end of it, let us see whether there is any danger. In the first place, I do not know that I quite agree with my leader, the chairman of the Judiciary Committee, on the subject of the responsibility of the Government. I am strongly inclined to believe if the Government by the exercise of its own legislative power, *per vim*, as you may say, takes the money of these companies to invest in a sinking fund, that it becomes responsible for the sinking fund. It is rather my opinion that it becomes responsible for the safe keeping of that sinking fund, because the companies may be said to have paid it *in invitum*, and where that has been the case, where we have by mere legislative power, and on that I rest this bill, and believe it as sound a foundation as the granite rocks of the mountains, on our power as a Congress of the United States; when we exercise that power and take this money and put it in a sinking fund in our own Treasury, it appears to me that we become guarantors for its safe keeping. I have not the least doubt in the world that the Government would make it good, whether the Government was absolutely liable or not; but there is no difficulty in making it safe, even where

you invest it in bonds. What is to prevent every bond being stamped that is taken? What is to prevent your requiring it to be done, if necessary, by making a requisition in this proposed law to amend the bill so as to require that every bond which is thus purchased shall be stamped with the word "sinking fund," or any other appropriate designation, which would prevent its circulation, prevent its negotiation? Nothing is more common than to do that. I have seen with my own eyes, done with a machine, twenty millions of bonds and coupons stamped, every coupon stamped by a machine, so as to prevent their circulation, to show that they belonged to a court in which the litigation was pending. There is no difficulty at all about doing it. They can stamp all these bonds at the Treasury Department. They can stamp half a million of them in a day if they were to buy half a million. If any amendment is necessary to the bill to require that these bonds thus purchased shall be stamped and the coupons upon them too, so as to prevent their negotiation, and therefore to prevent their being stolen and used, I shall be very happy to join with the Senator from Maine, or any one else, in framing such an amendment to the bill, of course for the safety and security of the Government, and of the companies too, in respect of this sinking fund.

Mr. BLAINE. Mr. President, the Senator who reports the bill and the Senator from Vermont differ a little as to the responsibility of the United States in case of loss in the sinking fund. Both Senators, I think, a little misapprehend me in my position. I was not speaking at the time in an adversary sense at all to the Senator's bill. I was trying to perfect the bill if I could.

Mr. THURMAN. So I understood the Senator.

Mr. BLAINE. I will ask the attention of my friend from Vermont. I think both Senators leave out of view a consideration which has to my mind a great deal of what I may call equitable weight in this matter. I understand the theory of this bill to be that you establish a sinking fund out of the net earnings of this company for the protection of all the persons interested in it. Here is a first-mortgage bond, and a Government bond, and a land-grant bond, and a sinking-fund bond, and stockholders behind them all, and this bill proceeds on the theory, which I am not disposed to say is an unwise one, that the stockholders should not have the disposition of all the net earnings, and a wise provision should be made, which the stockholders are themselves quite ready to make, for the security of the other persons interested in the roads.

Now, the stockholders say that they desire to make a sinking fund; that if they were permitted or if it were regarded as judicious or on the whole advisable for them to make and continue and administer that sinking fund that they could realize upon it at least 7 per cent., certainly beyond doubt 6 per cent., and some of them claim 8 per cent. In regard to the 5 per cent. of net earnings and the half transportation which belong to the Government under the acts of 1862 and 1864, there is no dispute at all here in this argument. The sinking fund is taken beyond that, out of something which the law does not now provide for and which they, if permitted themselves to put into a sinking fund, could realize very much more than you propose to allow them.

Mr. EDMUNDS. As they think.

Mr. BLAINE. As they think and as they believe, and they are very competent business men, whose opinion on that point probably would be better than that of the Senator from Vermont or mine—very much better than mine. They say that they could do it. We

say that is not safe, because although we might be perfectly willing to trust those who are now administering these roads we have not the least idea who may happen to be directors and administrators of this great trust twenty years hence, and after forty or fifty or sixty millions or more may be accumulated in the sinking fund somebody may come in as successors and think they can devote it to wiser purposes, and it may take wings to itself just as the Indian trust bonds did in the Interior Department, and you would not find them when you come to look for them at the maturity of the mortgage.

Therefore it becomes of course a wise provision that the Government of the United States shall be and must be the custodian of this sinking fund; but does not there come in there just a grain of equity that we ought to pay some consideration to the fact that they could realize as business men far more for this fund if they were permitted themselves to administer it? If you confine the Secretary of the Treasury to a 5 per cent. or a lower bond in his discretion you really deprive him of doing that thing which is not only most advantageous to the sinking fund but which is most advantageous to the Government itself, because no one, I apprehend, will doubt that the very wisest use that can be made of any surplus that happens in the Treasury of the United States from any source is to buy the 5.20 bonds of the United States which are now bearing 6 per cent. interest. The Senator from Ohio, I repeat again, says if that should happen to be lost the Government is responsible. The Senator from Vermont [Mr. EDMUNDS] says it is not. The Senator from Michigan, [Mr. CHRISTIANCY,] who is an able lawyer, says he thinks the Government would be responsible. Here is a difference as to the responsibility, but there cannot be the slightest doubt in the world that you are entirely safe if you agree to take this money from the company and treat it just as you do the Geneva award, which is in your Treasury, which is answerable for any appropriation Congress may make, but which is swept into the general hopper and ground in with the entire grist, just as the naval pension fund is. We have a naval pension fund of $13,000,000, but it is not in a separate safe, it is not in any separate bond; it exists as a credit to that fund, to be disposed of by Congress as they please. Why is it not the safest thing and the fairest thing both to the Government and to the sinking fund to treat that in the same way? That is what occurs to me.

One other thing, Mr. President. I am not disposed to think in looking at the bill reported from the Judiciary Committee that the sums which it exacts of the railroad companies are excessive. I do not think the sums included in that bill are more than the companies can fairly pay, but I wish to submit one thing to the consideration of those who are responsible for the bill and who are advocating it. The bill proceeds upon a theory which I will not here and now stop to discuss. It has been discussed, very ably and very elaborately, by the lawyers *pro* and *con*. The bill proceeds on the theory that under the reservation to alter, repeal, or amend Congress has the perfect right to dictate and direct what the companies shall do; that that rests in the discretion of Congress, and that in this bill which is now proposed Congress shall exercise that discretion. It is a "*sic volo, sic jubeo.*" We have the power reposed in us, and, with the discretion which should of course characterize all votes and all actions in Congress, we are about to exercise that power. We take a white sheet of paper and we write down on it what these companies shall do, and, as I said, I am not disposed to say, for I have not examined as closely as I might, that what you demand the companies shall do is either ex-

cessive or oppressive. But in your discretion you say it shall be thus and so. Under your power to alter and amend and repeal you here demand and direct what the companies shall do. Then at the close of the bill—not willing to part in any wise with this power, not possibly exhausting it by any exercise of it—you still say that "nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter to further alter, amend, or repeal the said acts hereinbefore mentioned." Therefore you do not know that this settlement which you order or the thing which you direct the companies to do will last a single year. You propose to leave this open, greatly, I think, to the detriment of the companies, which we are not possibly first bound to consider, greatly to the detriment of the interest of sound legislation, greatly to the detriment of the dignity and propriety of legislation; you propose, after you have written down exactly what you demand of them, that you will not say to them that that shall last over a twelvemonth.

Now I submit that in the full exercise of this power, which I am not debating and which I do not now assent to or deny, you yourselves, without asking the companies one way or the other, direct that they shall do this thing. Now, is it not fair, is it not a business proposition, is it not that which they have a right to expect and which we have a right to expect, that it shall for a time settle and remove this question from Congress? Do you want it here all the time? I ventured to say in a short debate last winter on a bill then pending somewhat similar to the present one, that for every one of the fifteen years I had had the honor to serve in either branch of Congress the Pacific Railroad had been, like the poor, always with us. It at least has that resemblance to the poor, that we have it always with us. I have some ambition to survive that condition of affairs. I want it away from here. I want it so directed, if you choose, that the Government shall get precisely what it thinks it should have, but that when you say that you shall also say to these companies "Do this as we direct, and you shall for a certain term have full power to operate your roads. Faithfully comply with all that we direct you, and it shall be held and taken, for the point at issue in reference to the debt, as a settlement between us."

Suppose you do not—I should like the attention of my honorable friend who reports the bill—suppose you do not do it, suppose you direct what is to be done here, and you pass the bill, but reserve the right at the next session of Congress, eight months ahead, to come here to reopen the question if you choose. You reserve to yourself the broadest power with the broadest possible intimation that you will exercise that power.

Now we are bound to take cognizance of current events; we are bound to take cognizance of what is likely to happen and in my judgment will inevitably happen. I think the Senator from Vermont [Mr. MORRILL] said that the stock of these two companies was $91,000,000. You cannot have $91,000,000 of speculative stock, for it necessarily becomes such, on the stock boards in New York without every shade of interest growing up that is known to the technology of Wall street speculators. There will be "bulls" and "bears" and "puts" and "calls" and "longs" and "shorts" on it all the time; one side will be interested in putting the stock far above and another far below its real value, and the very first scheme they will seize upon to effect their interest will be to get some legislation started in Congress, and Congress will be used perpetually under that clause as the bobtail to the kite of Wall street speculations on this subject. All

the scandal that grew out of the Pacific Mail subsidy, which was so serious at the other end of the Capitol, arose entirely from a dispute in Wall street that was adjourned from there to Washington to see if they could not get some legislation to affect favorably one side and unfavorably the other side. You will have that just as certain as the first Monday in December brings Congress together each year.

Just leave that open; just say as you say in this bill that, although we possess plenary and absolute power to provide what these companies shall do, we do not propose to say anything further, that we do not propose to say that we will not do anything for any consecutive ninety days, and you declare to every person outside who is interested in the agitation, "If you want a real lively row got up over these Pacific railroad stocks, the Senate and the House of Representatives at Washington furnish the place to start the machine going; just come here, and here we can have it any day you choose;" somebody will put in a memorial, somebody, possibly imposed upon, will put in a bill, somebody will move one thing or move another; you will have it on the anvil to be hammered the whole time.

I do not believe that it is the least in opposition to the theory on which even this bill goes (a theory which I am not now discussing) to add to the end of it, to section 12, what I shall indicate. I propose to offer an amendment that shall at least get the sense of the Senate, and I shall at least acquit myself of any future trouble that may come from that source. I shall have that satisfaction. The bill says—

That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said acts hereinbefore mentioned.

Now I propose to add right there, striking out the remaining words of that section:

But so long as said Central Pacific and Union Pacific Railway Companies shall faithfully comply with the provisions of the said acts of 1862 and 1864, and of this act relating to payments to the United States on account of bonds advanced and of the sinking fund to be established as aforesaid, such compliance shall be deemed and taken as sufficient to meet the obligations of said companies on account of such bonds prior to the maturity thereof.

I limit it wholly to this question, limit it exactly to the point of the indebtedness on the bonds. Unless I have miswritten it or misconceived the meaning of it, I do not put it one particle beyond the case in hand, nor do I say what the Congress assembled here in the year 1900 shall do when the bonds mature. They will probably be as wise or possibly a good deal wiser than we are about that, and the companies will probably long before that have passed into other hands. Let the future deal with the future, but we have laid down what they shall do. Now let us say that, if they faithfully do it, the thing can run until the bonds mature. It will operate as a sinking fund. I think the Senator from Ohio considers it to go very near paying off the whole obligation. I have not made a calculation, but will take his figures.

Mr. THURMAN. Within about $40,000,000.

Mr. BLAINE. That probably will not be very embarrassing; that can be dealt with as they of that day may choose; but, whatever you do, let us at all events not keep it as a running sore for the next fifteen or twenty years, as it has been for the last fifteen or twenty years.

Mr. THURMAN. Mr. President, I shall not go into an exhaustive answer to the Senator from Maine on his amendment to-day; but there are a few words that I want to say right on the spur of the moment.

The Senator imagines that if we do not make a finality from now until the maturity of the bonds, that is to say, for twenty years, for the average of the bonds will mature about July, 1898, there will be an eternal turmoil here in Congress; that men engaged in bulling or bearing this stock will come and pester Congress for more legislation and legislation inimical to the railroad companies. Now I want the attention of the Senator from Maine.

Mr. BLAINE. I will try to give it.

Mr. THURMAN. Experience is a complete answer to every word he said on that subject. For two years this subject has been before the Senate; for more than two years it has been before the Judiciary Committee of the Senate; and in all that time I have never seen or heard of one man hostile to the railroad companies lobbying Congress, not one. I have seen this Senate Chamber filled with the railroad lobby; I have seen the galleries filled; I have seen the corridors filled; I have seen the committee-room besieged; I have seen Senators besieged at their own houses by the railroad lobby; but never did I see one man or hear of one man here urging legislation hostile to these companies. The whole legislation on this subject has been the origin of the thoughts and feelings and sense of justice of members of Congress themselves in the discharge of their public duty, and there is not the least danger in the world such as the Senator from Maine supposes.

But now as to the proposition to tie us up for twenty years, if this bill should pass, irrespective of what change of circumstances may take place. If that is to be done, then I want a very different bill from this; I want a bill that will require a great deal more from these companies than this bill requires if our hands are to be tied for twenty years. Does the Senator know how much these companies will have to pay under this bill if it becomes a law, in actual cash in addition to the half-transportation account which we take? We put it in the bill that the Union Pacific shall pay $850,000 a year, and the Central Pacific $1,200,000 a year, or so much thereof as with the 5 per cent. and the whole transportation account shall make 25 per cent. of the net earnings of the roads as defined in the bill, and before we get net earnings we allow them to deduct from their gross expenses the interest on the first mortgage. I have had a calculation made to show how much they will have to pay in the future in addition to the half-transportation account which we take—how much additional cash they will have to pay upon the hypothesis that their earnings in the future shall be the same that they have been in the last six years on the average. The Judiciary Committee in their report show to the Senate that the half-transportation account and the 5 per cent. of net earnings of these two companies upon an average of their six years' business last past would be about $1,166,000 per annum. I take it in round numbers at $1,200,000 per annum, and upon that I submitted to the chief of accounts of the Treasury Department, who is perhaps the best expert in Washington, this question:

Taking "net earnings" as defined in section 1 of Mr. THURMAN's bill, and estimating the "5 per cent. of net earnings" and the "half-transportation account" in the future as follows, namely: Union Pacific, $700,000 annually, and Central Pacific, $500,000 annually; together, $1,200,000 annually; what additional sum would each company have to pay into the sinking fund to make a sum equal to 25 per cent. of its net earnings?

Now, remember we only require 25 per cent. We put in the sum of $850,000 for the Union and $1,200,000 for the Central Pacific, but we only require so much of that sum as with the transportation ac-

counts and the 5 per cent. of net earnings will make 25 per cent. of the net earnings of the companies; and how much do you suppose the companies will have to pay of additional cash beyond the half-transportation account which we retain? The Union Pacific only $100,000 a year, and the Central Pacific only $800,000 a year.

Now, are we to tie up our hands for twenty years, and as to the Union Pacific, no matter how great may be its gains, no matter how much its business and its profits may increase, say that if it will allow us to retain the half-transportation account which is now payable to it, about $400,000 a year, and pay us $100,000 more, making $500,000, we will continue to pay for it $1,600,000 every year in interest on its subsidy bonds?

Mr. MITCHELL. Will the Senator yield to me at that point?

Mr. THURMAN. Yes, sir.

Mr. MITCHELL. What is the difference, I want to ask the Senator from Ohio, between the amount then, if his calculation is correct, that is to be paid in by these companies under the Judiciary Committee's bill and under the Railroad Committee's bill.

Mr. THURMAN. I will tell the Senator.

Mr. MITCHELL. Before the Senator answers that, will he permit one other question? I understand the Senator that according to his expert the half-transportation account and the 5 per cent. of net earnings amount to about $1,200,000 or a little less than that.

Mr. THURMAN. That is the estimate of the Judiciary Committee.

Mr. MITCHELL. I say according to the expert, under the Judiciary Committee bill, the amount of the 5 per cent——

Mr. THURMAN. No, the Judiciary Committee estimate that. This expert, this chief of accounts who has been detailed to the accounts of these railroad companies for the last two years, is of the opinion that the 5 per cent. and the half-transportation, instead of amounting simply to $1,200,000, will amount to $1,700,000.

Mr. MITCHELL. But the estimate of the Judiciary Committee is that it will amount to little less than $1,200,000.

Mr. THURMAN. Yes.

Mr. EDMUNDS. Taking the companies' statement as evidence of it. He takes the companies' accounts.

Mr. MITCHELL. I simply wanted to understand the different estimates.

Mr. THURMAN. I put it to the Senate if they are willing to say that if this Union Pacific shall pay in the half-transportation account which we retain but which under existing laws it is entitled to receive and $100,000 more, a half million dollars a year, for twenty years, while we are paying for it $1,600,000 a year, we will not legislate any more on the subject; our hands shall be tied; we will not exercise the reserved power of Congress? No, Mr. President, that will not do. That proposition will not do at all. There is no necessity for it. These companies are in no danger from Congress if they will do what is right, and they know it perfectly well. The difficulty is even to get a bill that will make them do what is approximately right. That is the whole trouble. They are in no danger whatsoever. In the first place there is no hostility to them in Congress, and never has been. No measure has been proposed here in hostility to them. The only defect of the very bill of the Judiciary Committee—no, I will not say its "only defect," but its chief defect—is that it is too lenient to these companies; it is too conservative; it does not require what it ought to require. That is its chief defect; and to say that we shall take this measure, so lenient, so conservative, and abnegate

the power that we possess to legislate as circumstances may require, tie up our hands for twenty years, is what I, for one, can never agree to. I would a great deal rather let the law stand as it is than agree to any such proposition.

Mr. EDMUNDS. Mr. President, I should like to add a word on this subject. The proposition of the Senator from Maine that Congress is to provide by law that these payments into this sinking fund shall be unchangeable for twenty years, is, in my opinion, founded upon an erroneous principle entirely. The attitude of Congress in respect of these great corporations and of their creditors, is not that of an adversary party who is making bargains with these people like a private citizen; it is not that of a hostile operator who wishes to speculate out of their stocks and their operations; but it is that of an impartial tribunal that, like a court of justice in respect of the subjects that it deals with, stands always ready to adjust its operations according to the condition of each particular case all the time. You might therefore, on principle, just as well require in a judiciary bill that a court of justice that had once made an order for the appointment of a receiver, or for an assessment upon stockholders when a case is in court that would warrant that, or whatever should treat it as a finality, and that never in the discretion of the court should it be changed according to changing circumstances and the necessities of justice as to make a provision of this kind. The principle that the Senator stands upon is a principle that was equally forcible when these very charters and acts of incorporation were passed. Why could it not then have been said "whatever you agree that these companies may do in your law as you have written it, let that be a finality; reserve no power to exercise future control according as public interest and public justice may from time to time require?" It would be the same principle exactly. That will not do, Mr. President. No State could live by such legislation as that; and the most that States in respect of corporations have found occasion to regret in the legislation of the last fifty years has been that they have been misled or entrapped into granting of privileges or conceding rights without a reservation of future control, by which the public interest and the rights of private creditors of such corporations have been greatly prejudiced and injured. Therefore, if I am right in my proposition—and I am sure it will commend itself to every Senator who hears me—that the attitude of Congress is that of perfect impartiality in the nature of a legislative tribunal controlling these great public corporations for the duties that they were designed to perform as well to their creditors as the public, that right of control is inherent all the time; and hence while we require particular things to-day, it may happen that in the near future it will turn out that the things which appear to be perfectly just and right now may need alteration and change even in eight months.

It may be that some great disaster will so affect these companies that even 25 per cent. ought not to be paid in; and, on the contrary, we ought to provide for giving them further aid in order to keep up the communication between the distant and still intimately connected parts of the Republic. It may be that their business will so develop or that their operations will be so carried on as that justice to the public and their creditors will require that this tribunal, just as a court would in a case it was administering before it, shall exercise its supreme and impartial power to require them to do more and different from what they are asked to do now. It is inherent in the administration of our duties in respect of all such subjects. The

same argument might be applied, as is pressed by the Senator from Maine, to every law that we pass about national banks, to every law that we pass about tariffs and internal revenue. They affect private interests as directly as this legislation affects private interests; and yet who would agree for a single moment to provide that the tariff should stay so and so for a given length of time, or that any of the operations of the Government that affect the welfare of the public and the rights of private citizens should be foreclosed from the free judgment of this great tribunal, Congress, at any moment its own sense of justice should call upon it to interfere?

That is the principle, Mr. President; and then, as the Senator from Ohio [Mr. THURMAN] has so well said, there is never any danger that private interests in corporations will be unduly pressed to the injury of those corporations by the action of either Legislatures or Congress. The pressure of the people for justice, for protection, for fair play, is always a slow and a diffused pressure. The pressure of corporations for favorable legislation, by bills, by lobbies, by subsidized newspapers, by that concentrated force that the Senator has alluded to and that has been seen here on more occasions than one, is always constant and is always ready. The danger, therefore, in respect of future legislation in this case and in every other is not the danger that the judgment of Senators representing the people and the public interests will lead them originally to propose injurious legislation; the danger is, as it always has been, that proposed legislation will come from this constant and concentrated selfish effort of corporations to press through Congress legislation favorable to them and injurious to the people and injurious to their creditors.

I have seen that in respect of these very companies when the danger to public interests and the danger to the credit of these companies in respect of all their creditors, including the United States, was first brought to the attention of this body, and a bill was about to be considered taking some first and mere initial step about it, I have seen the officers of the companies in this very Senate Chamber on the day a bill was to be up, distributing their passes with an ostentatious impudence that was amazing. I hope it did not affect any Senator; I suppose it did not. I have seen fifty cents a line paid to affect legislation in the editorials of newspapers. That is a very small price now. That was in old times. I suppose the present editorials are paid for at rather higher prices. But we shall find out by and by, by an inquiry, if the two Houses are willing to direct it—and perhaps the present Government directors may be able to look after it a little—how much money has been paid by these companies "to protect their rights," as they call it, at this present session of Congress; not to any Senator or Member of Congress—I beg everybody not to misunderstand me—but to pursue everybody to his house and appeal to his personal friendship for this director or that director, to appeal to his interest in protecting his constituent who sold some bonds or some other thing, to excite his prejudice, to mislead his judgment; everything that goes to make unjust influence upon legislation may have taken place to a greater or less degree.

So that the practical danger, Mr. President, in all cases of this kind is not the danger that after this bill shall have passed, as I hope it will, the Congress of the United States will suddenly take some steps which will embarrass these companies by new legislation unfavorable to them. That is a danger that never has happened and never will. The danger will be, as it always has been, that people interested in these great corporations that are said to control the politics of States

and have been known to control the legislation of Congress in old times, when I could not muster a corporal's guard to vote for some of these earlier steps of inquiry and holding on until the Credit Mobilier exposure came out, and then everybody changed his views all at once. The danger is, I say, sir, quite in an opposite direction. There is therefore, in my judgment, neither sound principle upon which our hands can be tied up, nor the slightest danger to the real interests of these companies.

Mr. HARRIS. If there be no further discussion on the railroad bill——

Mr. SARGENT. I desire to say a few words.

The PRESIDING OFFICER. The Senator from California.

Mr. SARGENT. Mr. President, in all matters of any importance it is worth while to consider the stand-point. Congress in 1878 and Congress in 1862 stood in a very different attitude with reference to the Pacific Railroad measures. I had something to do with the legislation under which these Pacific railroads were built. The great difficulty in the House of Representatives when the original bills were considered was in satisfying members of that House that the legislation proposed would build the Pacific Railroad. Any one who will look at those debates will find running all through them evidence of the incredulity of members of the House and afterward of the Senate that the grants made by Congress would build the road. That incredulity, notwithstanding the predictions of those who favored the road and thought that the legislation was sufficient, seemed to have some warrant in 1864, when additional privileges were given to the Pacific Railroad Companies, and under those additional privileges the railroad was built.

At that time it was urged that Congress would be liberal with the companies in final settlement for advances, and the bill which originally passed the House made no requirement for the payment of the bonds and interest except by the transportation and the 5 per cent., the words the company "shall pay said bonds at maturity" being subsequently inserted in the Senate. There was a vast tract of unsettled country between the Missouri River and California, and the Government was paying millions for transportation annually, while our Pacific possessions were subject to great danger in case of foreign war. The enterprise seemed difficult, gigantic, and Congress was in a pleasant mood, and ready to make almost any contract that would secure the national advantages springing from such a road. Now we hear only curses and threats, often as unjust as undignified, against those who then accepted our smiles and promises, and the Government resolves itself into a hard creditor that makes Shylock respectable.

Is it well now for Senators to ignore the fact—the Senator from Vermont blinks it out of sight; the Senator from Ohio entirely omits to give any value to the fact—that there has been saved in annual expenditures to the Government of the United States by the yearly operation of this railroad millions of dollars? A value like that conferred upon the Treasury, is it not worth while to consider when we are determining the question whether we will put the screws a little tighter and reserve the right to screw them up a little more by and by? Against the debit side in argument here against the companies should go the credit that there has been an annual value to the Treasury of the United States by saving expenses for transportation of troops, of mails, &c., ever since the last spike was driven upon the Pacific Railroad of over $4,000,000.

In 1862 it was provided that 5 per cent. of the annual earnings should be paid to the Treasury of the United States, and the whole transportation. Men who desired to embark in this enterprise came before Congress, and notably among others Horace Greeley, and represented that it was impossible for the enterprise to start. They had started it on the Pacific side and were toiling and working up toward the mountains under the original legislation; but upon the Atlantic side it was said that it was impossible to make an organization that could proceed with this work; and then Congress did what? It doubled the land grant by the legislation of 1864. It provided that one-half of the money for transportation might be retained by the companies, retained the clause still with reference to the 5 per cent., and made the Government bonds a second lien. Why was that? Was it understood by the companies and those who were enlisting in the enterprise that subsequently Congress should take back the original land which was given, or that they could subsequently make new conditions as soon as the road was built and was in operation, stating that the whole of the transportation should be paid to the Government and more than the 5 per cent. should be?

Mr. THURMAN. Certainly.

Mr. SARGENT. I say it was not, and obviously it was not, and for this reason: capitalists were induced to put their money in there to go on with the enterprise. The Government did not build the roads, but these persons did upon the faith pledged that only one-half of the transportation should be required; and to say that it was understood by those men that that was the meaning of the congressional enactment, that this provision should only last until they had put their money into it and built the road, is the height of absurdity; and, as much respect as I have for the Senator from Ohio, I believe that, aside from a very strong feeling that impels him to push this measure through, in his cool moments or deciding upon it judicially he would say that the proper construction was that that was a contract to run until the maturity of the bonds, and not until the mere completion of the railroad; otherwise, where was the value of the inducement held out to capitalists? The question answers itself: there was none.

Now he comes in and says that Congress has a right to exact 25 per cent. of the net earnings instead of 5 per cent. "Why not fifty?" suggests the Senator from Connecticut, [Mr. EATON,] and I ask why not fifty? Why not proceed and, as was suggested by the Senator from Georgia [Mr. HILL] the other day, reverse the priority of the lien of the bonds? For in the act of 1864 the Government lien was subordinated to what are now called the first-mortgage bonds. Why can you not erase that contract? The Senator from Ohio will probably say "why can you not do it?" in the same spirit that he replies to me when I ask how can you alter another part of the contract?

Mr. THURMAN. The Senator certainly does not wish to misrepresent me.

Mr. SARGENT. Not at all.

Mr. THURMAN. I have said nothing in the world that intimated that we could destroy the lien of the first-mortgage bonds and make the lien of the Government paramount under the right to alter, amend, or repeal. That exactly marks the line of distinction. Every holder of a first-mortgage bond has his vested right to that bond and to the lien created by it, and you can no more take it away from him than you can take away from a man to whom the railroad company sold a tract of land and made a conveyance for it, his land. That marks

exactly the distinction. What I said in answer to the Senator's question was that it ought to have been understood, if it was not, that that provision in the act of 1864 that says one-half the transportation account shall be paid to the companies is subject to repeal. I did not touch the question of the lands; I did not touch the question of the lien of the first mortgage; but it is the right to repeal that provision which says one-half the transportation account shall be paid to the Government.

Mr. SARGENT. There is no distinction in the act and there is no distinction in morals between one part of that contract and another, and there is no distinction in right between the men who loaned their money to the men who built the road and the men who, building the road, put in their own money, as they did to a certain extent. I say there is no distinction in morals whatever, and there is no distinction in law, and to that point the logic of the Senator necessarily drives him. But if this obligation of these first-mortgage bonds is so perfect, why do we find in the whereases of this bill suspicion thrown upon them, that "if they are prior to the Government bonds," that "if they have priority," and phrases of that kind, the only effect of which can be to cast suspicion upon them in the public mind as connected with the reservation of power still to alter and amend contained in this proposed bill. It draws the supposition that your power to amend and repeal goes so far as to repeal the prior lien of these bonds.

Mr. THURMAN. Does the Senator want to know why that is in the preamble?

Mr. SARGENT. I do.

Mr. THURMAN. I think the Senator must have heard why it is in the preamble. Does not the Senator know that it has been asserted—I believe it has been sworn to—that more than two millions of these first-mortgage bonds never were issued by the companies at all, but were surreptitiously taken, or in plainer language stolen; that is, what would amount to stealing. I do not pretend to say who alleged it, because I do not undertake to show the fact was so. The draftsman of the preamble did not see fit to foreclose that business; but that the first-mortgage bonds lawfully issued are a paramount lien on the road has never been disputed and is fully admitted in the report of the Judiciary Committee. Out of abundant caution the Senator who drew the preamble used that language because of the fact I have stated; and if the Senator wants the evidence to be produced here, it will not be very difficult to produce the evidence; whether it is true or not I do not know.

Mr. SARGENT. A very practical question I think will arise from the explanation given by the Senator; and that is how, if the fact is as he states, that two millions of these bonds are surreptitious, what two millions are they? How are they to be segregated? How are you to arrive at them? Who swore to it the Senator does not state; nor who stole the bonds is not stated. Whether they were stolen or whether it has been sworn to or not, I do not know. Certainly the committee do not show it in any report which they have made on this bill; but the effect of it is, as I said before, to cast suspicion on the whole body of these bonds, and coupled with the further reservation of the power shows that there is an assumption on the part of Congress of a power to change the priority of the liens as between the Government and these parties, to take back one-half of the land, and why not? Why not take back one-half the land as well as reserve an additional half of the transportation? They are covenants

running together, inducements for building the road, having exactly the same validity, found in the same statutes, and of the same nature. The courts will construe this legislation not by the Senator's speech or by mine, but by its language.

Mr. President, I am in favor of a sinking fund being created for these companies; I am in favor of legislation that will accomplish that object, but I am not in favor of a sinking fund being created of such a burdensome character that the commerce of the Pacific will be taxed beyond endurance, or that any inducement for the next twenty-five or thirty years to the men who have the road shall be held out to let it go into dilapidation and out of repair. The intention of Congress was that a first-class road should be built and maintained; and now comes in a provision, provisional, for the time being, that they shall pay 25 per cent. of their net earnings, provided the other 75 per cent. shall be sufficient to pay mere operating expenses and the interest on certain debts. If they are not able out of that 75 per cent. to realize one dollar on any investment they may have made in it, or one cent of compensation for their services or on their capital, nevertheless the 25 per cent. must be paid in to the Government, and the necessary effect must be one of two: either the road will go to dilapidation, will not be kept up, or commerce will be taxed so heavily that it cannot bear the burden. I do not know that it can be expected that the Senator from Vermont or the Senator from Ohio would look upon this matter as I do, representing a Pacific State. I desire to divest myself of any prepossession for or against the men who have built this road, but I cannot justly dispossess myself of the inclination in favor of my own people, of those whom I represent.

This bill does not propose to keep down the rates which will be collected by these companies, and if the burden laid upon them is excessive, the necessary effect and consequence of it is that the rates of toll for travel and transportation must be increased, or else there is an insufficiency of revenue and the road goes to dilapidation and decay. Now, there is a medium which can be reached; there is a course which will be just to the Government and just to the companies, and the great object of the Government ought to be to safely secure the ultimate payment of its debt, and not to compel it necessarily to be paid by a certain time.

There are vast amounts to be handled, and the Government can well afford to require that a sinking fund shall be made of such a character that it will ultimately receive principal and interest upon its debt, but to shorten the time and increase the burden is to produce consequences which are not to be desired in a fair spirit by Congress, and certainly injurious to the companies. If a compromise of this kind can be arrived at—and I do not say it is the Railroad Committee bill, for there are things in that bill which I think should be changed for the benefit of the Government, and I do not think it is the Judiciary bill as it stands, especially with this further claim of power to increase exactions on the companies—but if a compromise can be arrived at which will avoid litigation hereafter, certainly a great point is gained. The Judiciary bill is full of litigation, from beginning to end. There is scarcely a section in that bill that will not necessarily be litigated before the courts, and especially with the threat held out in the speech of the Senator from Ohio to-day. If Congress shall assert that it can change from time to time, as it sees fit, the obligations of the companies, and compel greater and greater payments, even to the whole amount of the revenues of the road, even to the extent of violating everything that was supposed to be

a contract in 1864, then the railroad companies are compelled at the very start by every instinct of self-preservation to contest with all their power in the courts the admission of any such principle. I myself believe that the courts will never hold that there is power to violate the contract which was made in 1862 and 1864. I believe they will hold further, that those acts, where they relate to the power of Congress to repeal, are to be construed *in pari materia*, and that no more under the act of 1864 than that of 1862 can Congress alter, amend, or repeal without having due regard to the rights of the parties.

But, Mr. President, I did not intend at this time to enter into this debate. I thought what I have said was necessary after the declaration of the Senator from Ohio.

Mr. ALLISON. I move that the Senate proceed to the consideration of executive business.

Mr. BOOTH. One moment. Before the subject passes from the consideration of the Senate I wish to take the floor with a view of submitting a few remarks to-morrow.

Mr. ALLISON. Very well.

Mr. BLAINE. I ask that my amendment may be printed.

The PRESIDING OFFICER, (Mr. ROLLINS in the chair.) That order will be made.

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APRIL 3, 1868.

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THE PACIFIC RAILROADS.

The VICE-PRESIDENT. The morning hour has expired, and the Senate resumes the consideration of the unfinished business.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, the pending question being on the amendment submitted by Mr. MATTHEWS.

Mr. THURMAN. Before the Senator from California [Mr. BOOTH] proceeds, I wish to submit an amendment which I shall offer. I ask to have it laid on the table and printed. I do not offer it now but only give notice of it.

The VICE-PRESIDENT. The amendment will be printed and lie on the table subject to the order of the Senator.

Mr. CHAFFEE. I should like to hear the amendment reported.

The CHIEF CLERK. The amendment is at the end of section 3, to insert:

> All the bonds belonging to said fund shall, as fast as they shall be obtained, be so stamped as to show that they belong to the said fund, and that they are not good in the hands of other holders than the Secretary of the Treasury, until they shall have been indorsed by him and publicly disposed of, pursuant to this act.

Mr. BOOTH. Mr. President, this subject has been so long discussed that I can scarcely hope to say anything new; it has been so ably

discussed that I can scarcely aspire to say any old thing better than it has already been said; but feeling impelled to say something, I shall at least study to be brief.

The immediate question before the Senate is the motion to substitute the bill reported by the Committee on Railroads for that reported by the Committee on the Judiciary for the creation of a sinking fund for the Union Pacific and Central Pacific Railroads; and the discussion involves necessarily a comparison of the merits or defects of both. The history of this whole subject is too familiar to require more than that passing reference which is necessary to continuity of speech.

By the acts of 1862 and 1864 grants of land and loans of the credit of the United States were made to the Union and Central Pacific Railroad Companies for the purpose of building a railroad from the Missouri River to the Pacific Ocean, and the right to alter, amend, or repeal was made as absolute as it could be in express words.

These loans were to be repaid as follows: Five per cent. of the net earnings of the road and one-half their accounts against the Government for transportation were to be applied from year to year and the residue was to be paid at the maturity of the bonds. Estimating this yearly payment by the average business of the roads since their completion, their indebtedness to the Government as shown by the Senator from Indiana [Mr. MCDONALD] will amount in the year 1900 to $122,305,000. Add to that the principal of the first-mortgage bonds, $55,000,000, and we have the sum of $177,000,000, for which the security is two thousand miles of railroad, or at the rate of $88,500 per mile.

No one who has investigated this question will claim for a moment that this property is adequate or reasonable security for that amount of debt. The officers of the road themselves admit that it is not, and make that admission a claim for a settlement in the nature of a compromise. This admission, and the facts on which it is based, are utterly at variance with the representations of the companies as to the cost of this line of road. Their reports claim that there are $90,000,000 of paid-up stock; that is that $90,000,000 of actual capital has been paid into the treasuries of these companies and paid out in the construction of their roads. If that statement be true, the cost of construction would be about as follows:

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| Amount of the first mortgage | $55,000,000 |
| Amount of Government bonds | 55,000,000 |
| Amount of land mortgage | 20,000,000 |
| Capital stock paid up | 90,000,000 |
| Making in all | 220,000,000 |

for the construction of these two thousand miles of road, four-fifths of the distance being over a country as favorable to the construction of a railroad as any on this continent; and then this line of road, which they allege has cost $220,000,000, with a constantly growing business, with a constantly increasing value, in twenty-two years is not an adequate security for $177,000,000! There must be some huge mistake upon one side of this question, and it is not difficult to see upon which side the mistake is made.

The bonds of the Government were the basis of the credit upon which the companies were enabled to place their first-mortgage bonds. These two classes of bonds, omitting all mention of the land bonds, amount to $32,000 per mile to the Union Pacific and $64,000 per mile to the Central Pacific, and they not only built the road, but left a

large margin of profit aggregating millions of dollars. The $36,000,000 of stock in the Union Pacific and the $54,000,000 of stock in the Central Pacific do not represent money paid in. If it had been paid in, that with the land bonds alone would have built the road. This $90,000,000 of stock claiming dividends, standing between the companies and their obligations to the Government, does not represent one dollar nor the phantom of a dollar nor the semblance of a phantom. If it represents anything, it is simply an arbitrary profit upon fraudulent contracts. The assumption that it is actual capital is a bare, naked assumption, without a fig-leaf covering of fact.

This is the character of the investment which the Senator from Ohio on my right [Mr. MATTHEWS] says would not have been made except upon the faith that Congress would not alter in any particular an act which it reserved to alter in every particular! Over this, with the glamor of his genius, he attempts to throw the sanctity of vested rights! That bad system of building railroads for the sake of the profits to be made out of their construction by swelling the cost of construction to the largest possible amount, leaving the roads themselves burdened with debt for the benefit of an interior ring, found its culmination in the construction of these railroads.

On this condition of facts as to these two roads, so munificently endowed, earning now annually more than $16,000,000 of net profits, with $90,000,000 of stock which does not represent one dollar of actual capital while this Government is annually paying $3,200,000 for the benefit of these roads and of that fictitious capital, that $90,000,000 of stock claiming the right to absorb the whole of the enormous profits of the roads, leaving the Government without adequate security for the $122,000,000 which is due and to become due, these two bills are reported for our consideration covering the same ground but differing widely in details and fundamentally in principle.

One notable difference in detail is that the bill of the Railroad Committee proposes to take the 5 per cent. of net earnings and the half-transportation account, which should be paid annually to the Government, and place it in a sinking fund for the benefit of the railroads upon which the compound interest is to be estimated annually at the rate of 6 per cent. It is not to be invested; a computation is simply to be made, and they are to receive credit for that. That is, we are to allow to these railroads 6 per cent. compound interest on our own money. I wonder if they could not be induced to allow us to keep our own money by paying them simple interest! Such a principle extended upon payments of this nature for one hundred years would bankrupt this Government; limited to twenty-two years it simply amounts to a gift to these companies of $25,000,000.

Mr. THURMAN. Thirty-five million dollars!

Mr. BOOTH. Thirty-five millions! Then my calculation was wrong. Macaulay, I believe, relates—I am sorry I cannot quote his language accurately—that when Lord Clive was accused of rapacity he answered that when he remembered the princes who had been at his feet, the treasures that were open to him, his boundless opportunities for plunder, he only stood astonished at his own moderation!

The fundamental difference between these bills, however, is that the bill of the Judiciary Committee asserts the power of Congress, and proposes to enact a law; the bill of the Railroad Committee denies the power of Congress, and proposes to negotiate. The bill of the Committee on the Judiciary, if enacted, will require the companies to pay a sum which together with the sums they are now required to pay shall not exceed one-quarter of their net profits into a sinking fund,

the accumulations of which shall belong to the companies but held in trust for the payment of their debts. This is the main purpose of the bill, and the very height and front of its offending. If any legislative body in this country should enact by a general law that all corporations under its jurisdiction and over which it held and reserved control should set apart one-quarter of its profits to secure creditors and protect itself from bankruptcy, I can scarcely imagine the character of mind which would not recognize this as wise, proper, and constitutional legislation. This provision, so wise, so honest, so moderate, applied to these companies, confessedly under the jurisdiction of Congress, companies that have been so munificently endowed, is denounced with the very vehemence of invective. It is pronounced a violation not only of the Constitution, but of those moral instincts and principles of natural justice which underlie society and make civilization possible.

Mr. President, there is something in this more than natural, if philosophy could only find it out.

Sir, the fact that the Government is a creditor neither adds to nor takes from the power of Congress to legislate on this subject. We legislate as a sovereign, not as a creditor. If the rights of these companies are not safe here under the protection of the majesty of the law, where are they safe? Sir, we are here to legislate, not to negotiate. The Senator from Ohio on my right [Mr. MATTHEWS] says, "I deny utterly the power of Congress to declare that a debt not due is due, and to make the debtor pay it before it is payable." He might deny any other proposition which he could state for the purpose of demolishing it; he could fight any number of imaginary battles and gain imaginary victories, and wear imaginary laurels; but he is able to fight real giants, and gain real victories, and should not waste his strength upon wind-mills. I assert the right of Congress to compel any corporation under its jurisdiction to provide a sinking fund out of its profits to protect its creditors, to maintain its solvency, and I emphasize the assertion when it is a quasi-public corporation and sustains relations to the public and Government to which its solvency is an essential condition. And I reassert that the fact that the Government happens to be a creditor of the corporation impairs no right of Congress over it. We are not disqualified from interest, and have lost no power because its exercise is necessary to protect the whole public. I deny the right, and I resist the power of any corporation to borrow the money of this Government and destroy its ability to repay by dividing the whole of its profits upon stock, whether that stock be real or fictitious, genuine or spurious, and I resent the language that we must accept such compromise as the company may offer or do worse.

I repeat, Mr. President, that the bill of the Judiciary Committee proposes legislation, the enactment of law as a matter of sovereign right. The bill of the Railroad Committee proposes negotiation, a kind of treaty between high contracting powers, the sovereignty of the Government on the one side and the sovereignty of these two corporations on the other. Suppose the bill of the Railroad Committee should pass and the President should approve it; it has then become a law so far as compliance with the constitutional forms can make it, but it is by its terms a law to take effect upon an uncertain contingency, and as that contingency is under the control of these railroad companies, it is virtually a law which vests a power of defeasance in the companies. Would it not simplify this matter if upon the passage of such a bill we should send it simultaneously to the Presi-

dent of the United States and to the presidents of the railroad companies, with power to them also to return it in ten days with their joint approval or objection?

But these railroad companies have more power in the premises than the President of the United States, for they can at any time after it becomes a law defeat its operation by their action or non-action. Suppose the act should pass and the companies accept it under section 5 of the act, and thereafter make default, refuse to pay, there is no power in the bill to compel compliance. Then section 6 repeals all acts and parts of acts in conflict with that act. The United States has surrendered the 5 per cent. of net earnings, the half-transportation account; and what is there left but the right to alter, amend, or repeal reserved in this bill in the very same words that it was reserved in the act of 1864. Then the Senator from Ohio to my right [Mr. MATTHEWS] and the Senator from Georgia who has spoken upon this question [Mr. HILL] argued that the reservation was worthless to provide a new remedy in the act of 1864, and if their reasoning is correct it is equally worthless in this.

Much stress is laid on the condition of default introduced in this bill; but a default does not enlarge the rights of the creditor so as to give him power to change the contract. It only entitles him to a remedy to enforce it.

If Congress has the right to reserve a power to change a contract after default, it has equally a right to reserve it to change it without default. It is a distinction without a difference, for Congress is made the judge of the default. It becomes simply a question, not of power, but of discretion, the proper exercise of power. The right is reserved, I repeat, to the sovereign, not to the creditor; and if these words "alter, amend, or repeal" are to have any value in the bill of the Railroad Committee, they must have just the significance which we ascribe to them in the act of 1864 as a part of the contract, entering into it, qualifying every term, one of the conditions upon which it is accepted by the party of the other part, an express reservation of jurisdiction in Congress over the whole subject. The right to alter, amend, or repeal is a right to alter every section, every line, word, and syllable of the act, subject only to such limitations as are in the Constitution of the United States. Outside of that, it is a question of discretion, of the sense of justice; it ceases to be a question of power.

Now, what provision of the Constitution is applicable? It is said the bill of the Judiciary Committee impairs the obligation of contracts. It is immaterial to me whether there be such a restriction in the Constitution or not, for I should recognize the obligation of morals to be as strong as though it were in express law. Can a law violate the obligation of a contract which simply compels corporations under the jurisdiction of Congress, quasi-public, creatures of the law, to make suitable provisions for the fulfillment of their contracts? To me this seems to be worse than a confusion of language; it is a perversion of terms.

Why, Mr. President, let us recur for one moment to the circumstances under which the act of 1864 was passed. The companies had been unable to proceed under the act of 1862. Then Congress came in and doubled the land grant; it extended the time for the completion of the road; it released one-half the account against the Government for transportation; it took a second mortgage to the Government in place of the first; it released the 25 per cent. reserved; it gave them coal lands, gave everything asked or that could be asked, and reserved the right to alter, amend, or repeal. The cost of this

great undertaking was a matter of estimate, of guess; none knew how much it would cost or what the profit would be when it had been constructed. Congress might well say, "We are giving liberally; we are giving for a great purpose; we stand ready to give more, if more be necessary; but we reserve the right to alter, amend, or repeal, in order to protect the interest of the Government and the rights of the people."

The roads were finished at less real cost, I imagine, than any one conjectured; their profits have exceeded the most sanguine expectations of their projectors. How is it proposed to exercise this reserved power? By touching the rights of property acquired under that law? Not at all. By withholding any of the money? Not at all. Simply by requiring these companies, as Congress might require any other corporations under its jurisdiction, to pay one-quarter of their net earnings into a sinking fund to secure their creditors, to maintain their solvency, and enable them to fulfill their obligations and comply with the express conditions under which the grant was made. This is the outrage so monstrous in its proportions that it violates the Constitution of the United States, the moral instincts and the natural sense of justice which underlie society, and which frights the souls of Senators from their propriety and shocks their moral sensibilities beyond the power of intelligible utterance!

The Senator from Georgia, [Mr. HILL,] in order to avoid the legal effect of the right to alter, amend, or repeal, as a part of the contract itself, attempted to show that the act was not a contract, but that it authorized a contract to be made; and there was about this portion of his argument a subtlety of metaphysics which I think would have delighted the heart of Thomas Aquinas or Duns Scotius. It is true, as he tells us, that the act contains the terms of the contract, (and they are to be found nowhere else,) but the contract itself is an ineffable something which exists outside and apart from the terms. The act, he insists, only gave authority to the Executive to make a contract. What contract did the Executive make? How did he make it? The law required the Executive to determine when the companies had complied with their contract. That was a duty imposed, and the only power conferred was one incident to that duty. Had the Executive any option in the matter? Was he at liberty to disregard the law or change its terms? He had but one duty, to execute the law. Had he refused to discharge this duty, had he exercised the power corruptly or vexatiously, the rights of the companies under the law would have been in no wise impaired, while the Executive would have been liable to an impeachment. Every act done by the Executive was done under the law, received its validity from the law, and became a part of it. Sir, this is a Government of law, and every act done by authority of law is the act not of the officer or Department, but the act of the law. If this Government be, as we believe, "perfect in every part and cannot but by annihilation die," it is because every part of it is permeated and vitalized by the spirit and potency of law.

The Senator from Georgia seems to me to proceed on the assumption that Congress cannot alter or amend the act of 1864, unless a court of equity on the facts presented would decree the specific relief sought by the amendment. Like a bold reasoner as he is——

Mr. HILL. Will the Senator from California allow me?

Mr. BOOTH. Certainly.

Mr. HILL. I am not aware that I have ever said on any occasion that Congress cannot alter, repeal, or amend the act.

Mr. BOOTH. I understand that this bill does propose to do that. I shall speak further on that subject and perhaps the Senator from Georgia may desire to——

Mr. HILL. I said it took the authority of Congress as well as the other things to complete the contract. Congress did not make the contract by the passage of the act. When that authority was executed, the rights and obligations of the parties were fixed. By compliance with the terms, then, the authority became executed. Congress by the repeal of the act could not annul the contract. I have always conceded that Congress could repeal the authority to make the contract.

Mr. BOOTH. Precisely, but I have been endeavoring to show, and if I have not shown that I have not shown anything, that this was not an authority to make a contract but was the contract when it was enacted and accepted by the companies.

Mr. HILL. Does the Senator from California hold that when these acts were passed and approved by the President, the contract was made and complete?

Mr. BOOTH. So far as it could be made by the Government.

Mr. HILL. Ah! So far as it could be made by Congress, the authority was complete, but the parties were not compelled to accept, the parties were not compelled to comply with it. No obligations or rights had been fixed.

Mr. BOOTH. The Senator will pardon me. But he has gone over this subject, and if we can ever understand him we do. I do not profess to be so skilled in metaphysical subtleties and dialectics as to be able to understand that proposition and I have not seen any one who does.

Mr. HILL. That may be.

Mr. BOOTH. Like a bold reasoner, the Senator from Georgia does not shirk consequences. He takes hedge, fence, and stone-wall at a flying leap and accepts logical results. In answer to the Senator from Vermont he avowed the proposition "that if Congress grant a charter to a particular national bank to be called the Bank of North America in the District of Columbia for twenty years, and that bank accepts the charter and complies with every provision in it, there being at the end a section which says Congress may repeal this act at any time, then Congress cannot repeal it within the twenty years, unless the company shall violate some of the provisions of the charter." This is the logical inference of the whole tenor of the argument against the power of Congress to enact the bill of the Judiciary Committee. Congress so exhausts its power in the creation of a corporation that it can reserve no right of control even by express words. Times and circumstances may change, a measure beneficent at its passage may become a stumbling-block, or an instrument of oppression; the corporation created by the law is fixed above the power of its creator.

There is a story told of an inventor who constructed a machine with such marvelous ingenuity that it became instinct with life, endowed with will and motion, but without a soul. This monstrous thing became the superior of its inventor. He could neither alter nor destroy it. It became his master and reduced him to a loathsome servitude. This fiction, so wild and weird it scarcely seems the product of a sane imagination, if the construction of the Senator from Georgia be correct is to be realized in law.

The Senator from Georgia having proven to his satisfaction that the sections of the law which set forth the contract cannot be changed,

and then that the provisions which constitute the charter cannot be changed, I have been at a loss to know what portion could be reached by the power to amend so plenary and absolute in terms. After much study and thought I have discovered one portion of the act which is not covered and protected by the ægis of his construction. That portion is the title. We cannot change the thing; we are at liberty to-day to change the name of the thing, and I think we ought to do it.

Mr. HILL. I will ask the Senator if I did not concede that the reserved power related to the charter, the corporation, the franchises of the corporation, and I ask the Senator if the franchises are conveyed by the title? Are not the franchises conveyed by the body of the bill, and are not the regulations of the franchises contained in the body?

Mr. BOOTH. I believe I must claim the floor.

The PRESIDING OFFICER, (Mr. COCKRELL in the chair.) The Senator from California is entitled to the floor.

Mr. BOOTH. I was about to say, and I believe I will say, that I think we ought to exercise the power and change the title, for I am convinced that if the Senator from Georgia could make another argument as powerful and subtle as the first he would take away that power.

The bill of the Railroad Committee has been called a settlement. To my mind it is a surrender. The whole amount of money involved in this subject is of trifling importance compared with the principle which it proposes to surrender. Sir, the question is before us; let us not barter, let us not dicker; let us legislate. If we are as powerless as is contended on behalf of the Railroad Committee, let us learn that from the highest judicial authority, for if that be so there will be no more charters granted, nor aids bestowed while the world stands and the Congress remains sane.

The Senator from Georgia in his eloquent peroration said that these railroad companies are not the kind of corporations which he dreads. What he dreads is the great and growing power of the corporation of the Federal Government. I accept the term from his stand-point. From that point of view these corporations swell into the imperial proportions of sovereignty or in their overshadowing presence this Government dwarfs into the dimensions of a corporation. I accept the term. The stockholders in this corporation of the Federal Government are forty-five million free people entitled to share and share alike in all its benefits. Its charter is the Constitution of the United States. It holds in its hands the title deeds to liberty for countless millions yet to be. I trust it will ever be, as I believe it has ever been, full of grace, mercy, and loving-kindness to its friends; dreadful only to its enemies. Look upon this picture and then upon this. The record of the corporation he does not dread can be read in the transactions of the Credit Mobilier and the Contract Finance Companies. His election is not mine, but I thank the Senator for the boldness of his speech. He has cloven this subject to the center; he has cleft its heart in twain. It is a question as to where our allegiance is due. We cannot serve two masters. Which shall we serve?

Mr. PLUMB. I move to lay aside this bill temporarily and proceed to the consideration of Senate bill No. 913.

Mr. THURMAN. Mr. President, I hope that will not be done. I have tried again and again to speed this bill, which I think ought to be passed, and I hope it will be passed without further delay. If there are other Senators who wish to speak on this bill, surely some of them must be prepared to speak to-day, and I do not wish it to be

laid aside. I have given notice time and time again that I would ask the Senate to sit this bill out to-day; but owing to the sickness of some Senators and the necessary absence of others I am compelled to refrain from doing that; but I shall certainly ask the Senate, most respectfully, but most earnestly, to sit this bill out to-morrow, and as that will leave comparatively but little time for Senators to speak upon it and consider all the amendments that may be offered to it, I do hope that those who wish to speak will speak to-day, as many of them as can. I beg leave most humbly to submit that this bill ought not to lie over from day to day for set speeches to be made. The great features of both these bills have been fully considered and we have got to that stage of the debate which is called the business stage of a debate, when we can get down to the concrete of these two bills, and I hope that therefore the consideration of the subject will be continued.

Mr. PLUMB. I had no design at all of interfering with the present consideration of this bill, but I supposed that we should probably proceed upon the theory which we have heretofore pursued of one speech a day and then an executive session.

Mr. THURMAN. I have been trying to defeat for a week this theory of one speech a day on this bill. If there are to be more speeches I hope we shall have two, three, or four of them to-day, so that we may come to an end some time or other. I know very well that these are corporations in perpetuity and we hope our Government is in perpetuity, but we are not perpetual, and I want to see this thing ended before I die.

Mr. PLUMB. I entirely agree with the Senator from Ohio as to the propriety of this bill being continuously considered until it shall be disposed of. I was only chafing somewhat under the delay which had occurred through no fault of mine and no fault of his. I desired if this bill was not to be further spoken upon to-day that we might proceed to the Calendar and make some progress with it instead of adjourning or going into executive session. My suggestion was only made with the design of expediting business. Of course, if any Senator desires to speak presently upon this I will cheerfully withdraw my motion.

Mr. EDMUNDS. If none wish to speak, let us vote.

Mr. THURMAN. I will say one word more. If there is no Senator who wants to speak to-day, let us take the vote on the motion of my colleague to substitute the Railroad Committee bill. I am ready to take the vote on that now without one single word more on my side.

Mr. PLUMB. That is entirely agreeable to me. I cannot conceive of anything more so. I desire to have this question disposed of, and now will suit me better than any other time.

Mr. THURMAN. I am willing that the vote shall be taken on the substitute now without one single word from me or those who support the Judiciary Committee bill.

Mr. PADDOCK. I am one of those Senators who are not entirely satisfied with either of these bills. I understand that the Senator from Colorado [Mr. CHAFFEE] this morning introduced a bill as a substitute for both. That was ordered to be printed. I should be glad to see that bill before we proceed to action on either of these others. It is possible that after that bill is brought to the attention of the Senate and is laid before the Senate, I may wish to make a remark in relation to the whole subject.

Mr. EDMUNDS. The Senator might state to us now what his objections are to these two bills.

Mr. PADDOCK. I have not seen the bill; I cannot state.

Mr. EDMUNDS. No, but the Senator says he is not satisfied with the Judiciary Committee bill or the Railroad Committee bill.

Mr. PADDOCK. I am not ready at the present moment to state my objections to these bills, until I have seen the other bill and seen whether it is obnoxious to the same objections.

Mr. CHAFFEE. I was about to say that I hope the Senator from Ohio will not press a vote now. I have introduced to-day a bill upon this subject which will be printed within an hour and be here on the desks of Senators, and I desire very much that the Senate shall look at that bill. I intend to press that bill as a substitute for both of these bills, and I have enough faith at least to believe the Senate will agree to my bill in lieu of either of the other bills, and I should not be surprised if the Senator from Ohio [Mr. THURMAN] would agree to my bill himself. I believe him to be a just and fair man. I hope the Senator from Ohio upon a subject of this moment will not press us to a vote upon a single day, but at least allow the discussion to run until Saturday. I desire myself to make some remarks on these bills, but I am not ready to-day, and should like to have the discussion continue at least until Saturday.

Mr. THURMAN. The Railroad Committee reported a bill and my colleague moved to substitute it for the Judiciary Committee bill. The Senator from Colorado has this morning laid upon the table a substitute that he will offer when it is in order for him to offer it. The pending question is the motion of my colleague to substitute the bill of the Railroad Committee for that of the Judiciary Committee. Now, if there is any one who wishes to speak in favor of that substitution I hope he will go on. There have been a great many speeches made against it and in favor of the Judiciary Committee bill. There have not been many speeches made in favor of the Railroad Committee bill, and if there is any one who still stands by the Railroad Committee bill I hope he will speak. If not, let us vote upon the motion. That cannot affect the substitute proposed by the Senator from Colorado. His motion will come up as a distinct and substantive proceeding.

Mr. CHAFFEE. I am in hopes that the Senator from Ohio having charge of the Railroad Committee bill [Mr. MATTHEWS] will accept my bill, and I have the same hopes that the Senator from Ohio on my right [Mr. THURMAN] will accept it too, and therefore I wish to have the bill printed and laid on the table, and it will be here within an hour.

Mr. THURMAN. Well, in order to remove one of the grounds upon which my friend from Colorado wishes this bill laid over—his hope that the Senator from Ohio will consent to his bill—I must tell him at once that I have looked into it enough to know that I never can consent to it as a substitute for the Judiciary Committee bill. In the first place, it proposes to tack on to this bill his proposition to require these roads to prorate with the Kansas Pacific and perhaps some other road.

Now whatever may be my opinion in regard to the duty of the Union Pacific and the Central Pacific to prorate, I am totally opposed to connecting that proposition with this bill for the creation of a sinking fund. I want this proposition for the creation of a sinking fund to stand by itself, upon its own merits. I think every Senator will see that it ought to stand as a perfectly distinct and independent measure. Therefore my objection to the substitute of the Senator from Colorado, without at all committing myself against the prorating proposition, or expressing any opinion upon the one or the other

beyond what I have heretofore done in the Senate, my fundamental objection to it is that it seeks to tie that to this sinking-fund bill, whereas the sinking-fund measure ought to stand alone. Each measure ought to stand on its own merits.

Then I have another objection to the sinking-fund provision of the substitute proposed by the Senator from Colorado. In some respects it is precisely like the Railroad Committee bill. The difference is that it requires a larger sum than the Railroad Committee bill requires and a less sum than is required by the Judiciary Committee bill.

Mr. CHAFFEE. I do not believe that the Senator from Ohio has read the substitute that I presented this morning. If he will examine it he will see that it proceeds upon the same theory exactly and recognizes the power of Congress to deal with these corporations.

Mr. THURMAN. I agree to that.

Mr. CHAFFEE. It surrenders no right the Government has at the present moment and proceeds upon the same theory as the bill of the Judiciary Committee. I had great hopes, therefore, that the Senator from Ohio would accept it.

Mr. THURMAN. I did not say that it surrendered the rights of the Government; but from the hasty glance that I have given to the bill, unless there are some provisions that have escaped my attention, it has a radical defect in it that is in the Railroad Committee bill. It takes our own money and allows these railroad companies interest upon our own money compounded every six months at the rate of 6 per cent., and it allows them interest upon all that they shall pay at the rate of 6 per cent. compounded annually for twenty-two years from this time, when we can borrow all the money we want at 4 per cent.

These are fundamental objections with me to the Railroad Committee bill and to the substitute proposed by the Senator from Colorado. I do not wish to speak of that substitute at any length until I shall have read it in print and seen that I perfectly understand it. But be that meritorious or not, let it receive ever so much or so little consideration, we have a pending question before us, the motion of my colleague to substitute the Railroad Committee bill for the Judiciary Committee bill. If any one wants to speak in favor of that motion to substitute, I pray him to speak now. If not, then let us have a vote on that pending proposition. I see so many guns in battery on my colleague's desk that I take it for granted he is prepared to speak, and I pray him to do so.

Mr. MATTHEWS. Mr. President, when the Senator from Michigan [Mr. CHRISTIANCY] addressed the Senate in support of the bill reported from the Judiciary Committee, I rose for the purpose of putting a question to him, to which he objected on the ground that I would have ample opportunity for future reply. I expect to make that reply, but I did not come here this morning fully prepared to do so, because I understood the arrangement was that the Senator from California, who has already spoken, would be followed by the Senator from Massachusetts, [Mr. DAWES.] I understand from that gentleman that he is too unwell to proceed with his argument to-day.

The gentleman may think this argument is exhausted. Perhaps it is; but certainly I am not willing that it should rest, so far as I am concerned, where it does now, having failed of the opportunity to correct gentlemen on the floor in regard to an understanding of my own position. I see no occasion for extraordinary haste about the matter. No time has been lost. We have transacted other business as though this measure was not under discussion. I think it but

an exercise of ordinary courtesy that no attempt should be made to force either the debate or a vote at the present time. I have had no opportunity of considering the proposition I understand to have been made by the Senator from Colorado this morning. I had a brief conversation with him, in which he explained some of the leading features of his substitute. He has suggested that it might possibly furnish to my mind, and to those who like myself have been opposing the bill of the Judiciary Committee, a better substitute than we have offered. I should like time to consider that, but it cannot be done until his bill is printed and laid upon the table. I am ready to go on to-morrow; I am not entirely unprepared, if the Senate insist upon it, to go on to-day, but it would far better suit my convenience to postpone my remarks until to-morrow.

Mr. DAWES. Mr. President, I do not like to occupy the position of one advertised to make a speech. I had intended all along to submit some remarks before the debate closed, somewhat in the nature of criticism upon both these bills, and not as really the advocate of either. I did not come here to-day expecting to do so or feeling like doing so; but rather than have it supposed that I am taking time to prepare a speech, what little I have to say about this matter I would just as lief say to-day as at any other time. If it is agreeable to the Senate, if the Senate desire to continue the discussion to-day, perhaps it is just as well that what I have to say should be said now as at any time. I take no part in any struggle for mastery between different methods of accomplishing the same purpose now before the Senate. Any intellectual tournament of that kind, however entertaining or instructive, nevertheless tends to lead those who participate in it into positions and arguments that, after it is over, it is difficult to sustain by sound reason.

The great amount of indebtedness of these railroad companies, as well on their prior mortgage bonds as to the Government itself, is such that it is utterly useless to expect a liquidation of that indebtedness without legislation. According to the reports of these two committees, that indebtedness will amount in twenty years from this time to the enormous sum of $208,258,137, minus what the Government itself may receive in for the half-transportation account and the 5 per cent of the net earnings, whatever they may be. All are agreed substantially that in 1898 there will be not far from $175,000,000 to be met by these companies. That they will have on hand sufficient assets at that time accummulated of their own accord and lying in their treasury awaiting the time when this indebtedness shall become due, no one expects. To expect it is to expect of these corporations in their dealings with the public and with their stockholders and themselves a line of conduct that finds no parallel in any other business transaction. That they would accumulate in their treasury and have ready an idle capital of $175,000,000 in 1898 to liquidate this indebtedness, no one, I say, expects. In looking to the means of meeting this indebtedness every one turns to a sinking fund. The Government directors of the Union Pacific Railroad have called the attention of the Government to the propriety and the necessity of such a fund. In the very last report they say:

> If no definite plan for a permanent and final adjustment of the relations existing between the Government and company, relative to the full reimbursement of the former on account of the subsidy bonds issued to the latter, be adopted, then the Government directors would respectfully suggest that Congress be recommended to pass an act authorizing the Secretary of the Treasury to receive from the company, from time to time, such sums as it may elect to pay into his hands, for the establishment of a sinking fund for the extinguishment of the liability of the

company to the Government on account of said bonds. It is believed that the company would at once, upon the determination of the 5 per cent. suit, avail itself of such a provision of law and commence payments under it for the purpose named. Such a plan would be a great improvement on the present want of one, and would be preferable to the establishment of a voluntary sinking fund, with its funds remaining in the hands of the company and subject to its control.

The Union Pacific Railroad Company itself, at its very last meeting, on the 6th day of March, passed this resolution:

*Resolved*, That the stockholders acknowledge the necessity for a sinking fund to provide for the final payment of the Government debt, and the delay in providing one has occurred from their belief that some proposition would come from the Government which they could accept and from a preference that the funds should be held by Government, as more satisfactory to both parties to the contract; that the company is willing to anticipate the debt upon any basis or plan submitted which will not be a burden upon its present and a menace to its future prosperity and business.

I do not know what action has been taken by the Central Pacific Railroad Company or what is its disposition in reference to this matter. This action of the Government directors of the Union Pacific and of the Union Pacific itself is in perfect unison and harmony with the object and purpose professed, and I have no doubt sincerely, in both of the methods proposed here. Therefore it is proper for us to consider what is the best method of establishing a sinking fund, and it is to that what little I desire to say this morning shall be addressed, leaving for others the discussion of the question what is the absolute and unqualified power of the Government over the subject-matter. With the companies ready to co-operate with the Government in the establishment of a sinking fund to be kept by the Government itself and with the Goverment impressed with the necessity of such a sinking fund, it does seem to me strange if it be not within the power of this Congress and these companies in co-operation so to adjust the questions and the basis and the terms of a sinking fund as to accomplish the end sought by the Government: the protection of the creditors of these companies upon terms least burdensome to the corporations themselves and most conducive to that prosperity and development of the country through which they run, which was one of the controlling purposes and objects of the original grant itself.

Now, sir, what are the elements that constitute a true and proper sinking fund? Evidently, as all will admit, first and above all is security to that fund. It is of no practical use, it is a broken reed upon which to lean, if it do not contain within itself the element of absolute security. To obtain absolute security is the first thing to be sought after in legislation here upon that point. Any legislation which fails of obtaining absolute security to this sinking fund fails in accomplishing the great end for which we should endeavor to legislate in this matter. We legislate not for to-day; we legislate for 1898. We cannot tell what may be the influences or what may be the conflicting and antagonistic elements which shall be encountered between this and 1898. We must provide for every possible contingency that human foresight can discover, or else we fail in the attainment of the object these bills profess to search for. Let me say that first of all no sinking fund has the element of security in it which is left under the control of the debtor. It is in essence no sinking fund which is left under the control of the debtor, subject to his will, his present gain, his present ideas of what is for his interest. It is equivalent to leaving the whole matter where it was before, subject only to his sense of propriety and the obligation of his contract with the creditor, if you leave your sinking fund under his control.

Equally so, Mr. President, if you leave your sinking fund under the control of the creditor alone. The sinking fund is the property of the debtor. It is his property, to be set aside for a purpose superior to present obligations. To put it into the hands of the creditor is to put it under his dominion and control, and actually to make it a present payment. There is no difference in essence, no difference in fact, between present payment and putting the property of the debtor under the absolute control of the creditor. Absolute control on his part implies the power to make such appropriation of it as he pleases. Absolute control on his part is to put in his power anticipation of payment; and not only is that in contravention of the obligation itself and of the faith which exists between debtor and creditor and the terms of the relation between them established by themselves, but it makes war upon the very first principle upon which a sinking fund is to be founded, namely, security that that fund shall be in 1898 present, untouched, unimpaired, ready for that application for which it is founded, and for no other.

Then, if it is not to be put under the control of the debtor as being useless and idle and leaving the creditor with no possible additional security, and if it cannot be put under the absolute control of the creditor without violating the very terms of the contract for which provision is to be made in the future, it must be put either out of the control of both parties or under some joint arrangement or assignment of the sinking fund, so that neither can exercise control over it without the assent of the other. It is upon this principle that all sinking funds which have proved a success and not a snare have been established. The history of the philosophy of sinking funds lies in these two elements: absolute security against the debtor or the creditor alone and certainty that the accretions to the fund shall exceed the yearly accumulations of interest. Those two elements established in a sinking fund make it absolutely certain that the debt will be canceled. They do not make it absolutely certain that it will be canceled at one time or another, but those two elements of themselves make it absolutely certain that in due time the debt will be canceled. How those two elements shall be secured in a sinking fund for the payment of the debts of these railroad companies is a question to which the Senate ought to address itself, and I have no doubt supposes it is addressing itself. It is to that end that my vote shall be governed, and to that measure which shall best accomplish that end I propose to give my support.

In order to make the security most certain the present burden of a sinking fund must be most light. Just in proportion as you increase the present burden of a sinking fund, just in that proportion do you lessen the security of the fund. We can learn wisdom from the sinking fund which the United States established for the ultimate payment of the national debt itself. That was established when the debt was only a little over $150,000,000, upon a plan measured by the amount of that debt; yet the debt itself to which the terms of the sinking fund were applied went on increasing to such an enormous extent as to make the yearly accretions to the sinking fund, coming in the shape of additional burdens upon the people, continually increasing until, if the sinking fund continue unimpaired, it will extinguish the whole of this great enormous public debt in a little over thirty years from the time it was contracted. No man dreamed at that time that the burdens of the sinking fund, the accretions to it, were of such an amount. And what has been the effect? Already we hear note of warning of attacks upon the integrity of the sink-

ing fund itself. Bills in both Houses of Congress have been introduced for the purpose of abolishing that sinking fund; and to-day, if it were simply a fund of so many dollars and cents, actual funds of the United States, lying in the Treasury awaiting the final appropriation for the payment of the public debt of the United States, I hardly think any Senator would be bold enough to say that it would stand intact five years. Looking at the dangers coming to that sinking fund from the temptation to impair it—a fund of hundreds of millions of dollars accumulating so rapidly every year in the Treasury—Congress wisely, in 1870, extinguished the whole of that accumulation of wealth in the sinking fund and turned it all into the Treasury, canceled all the bonds held by it, and now so much of that sinking fund is safe. What it may be in the future, growing out of this very element of excessive accumulation, the discontents that it stimulates and aggravates, the desire to relieve the people from it that is growing every year and imperiling the fund itself, may have a lesson in it which we ought to heed in establishing this sinking fund, which is to run twenty years at least from this time. While the accumulations to this fund should be enough to secure ultimate liquidation, they should not be so much as to stimulate discontent and a disposition in any quarter to attack with hostile legislation a fund designed, like this, to be kept at least twenty years, for the purpose of the special liquidation of a particular indebtedness of and to the United States.

Let us, in view of these principles, upon which I conceive everybody will agree that a sinking fund ought to be based, in order to make it secure and certain, turn to the propositions of these two bills and see whether they meet these ends, and, so far as we can see, answer these two requirements. First, the Judiciary Committee propose to gather into a sinking fund enough to liquidate the first and second mortgage bonds in about twenty years—$175,000,000 in twenty years. With the exception of the sinking fund to which I have alluded, which got its vast accretions without deliberate intention on the part of the Government, there is no sinking fund that I have ever read of that gathered into itself the vast amount of $175,000,000 in the brief period of twenty years; and whence is it to come? It is, every dollar of it, to be gathered off the traffic upon these roads. It is, every dollar of it, to be charged to those who use these roads as passengers and as freighters. This burden is proper enough to be borne if properly distributed, if so adjusted as not to be made unreasonable and excessive, and yet to be made certain. It is proposed by the Judiciary Committee bill to gather up the whole of $175,000,000 off the traffic over these roads in the short period of twenty years. That, sir, of itself is an element of insecurity. It is to be gathered substantially off the local traffic of these roads, for within five or six years there are to be two other roads competing with these for the transcontinental freighting and passenger business which is to be done for all the time covered by this sinking fund.

Therefore, up to a certain limit it will be impossible for these roads to do transcontinental business and charge upon it an excessive burden to meet the obligation of this sinking fund. It must be charged, then, largely in the end upon the local traffic upon these roads; but whether charged upon the local or the through business of these roads it is a burden upon the people in the end.

I do not use this argument for the purpose of saying that the burden ought not to be imposed at all, but for the purpose of saying that care should be taken, that it should not be excessive, just as men now

argue against provision for the yearly accretions to the sinking fund of the nation. It is better to extend it over a greater length of time, they say. We have paid, they say, our full share of the burden of the public debt, and it is better to extend it over a longer period of time and distribute upon those who come after us some of these burdens.

I submit that no sooner will it be enacted that these companies must gather from off their business enough money every year to amount to $175,000,000 in twenty years from this time than you will begin to hear the mutterings of discontent in every part of the country that shall do business upon these roads. The whole cheap-transportation sentiment of the country, which has been so strong, and for aught I know is as strong now as ever, will be invoked against the terms of such an exactive sinking fund as this. Therefore, I submit that, in the interest of security and permanency to this sinking fund, without impairing the ultimate certainty of it, it is better that its exactions should be less and the time for its consummation be postponed for a few years, thereby not only lightening its burdens but rendering the fund itself more secure from a disposition to pervert it or to impair it or to repeal it.

The character of the sinking fund, the exactions of the sinking fund, are not all. What is the inevitable effect upon the roads themselves? I have not expressed thus far a doubt of the power to impose any obligation that Congress in its wisdom may see fit to impose. I am not here as the advocate of any of these roads or a defender of its past or a eulogizer of its future. I know none of the parties interested in either of them. I was in Congress when they started in 1862 and in 1864. I have watched as a legislator all that has been done. I am of the opinion that the accomplishment of the building of these roads in the time of war was one of the grandest of all the achievements of that war, whether you look at the grand character of the undertaking or the results obtained through it. Whatever was done that deserves criticism or condemnation in the manner of carrying out the powers granted by Congress, I have nothing to do with to-day. Here is a great transcontinental line to live by the side of two other equally grand transcontinental lines, and it cannot be treated wisely in any other way than by the establishment of a sinking fund that shall be absolutely secure and certain of the ultimate result, and yet so distributed in its burdens that it will not cripple this line by the side of competing roads nor exact unnecessary and unreasonable burdens from those who must patronize and use these roads. Otherwise the roads, as the Senator from California [Mr. SARGENT] has said, and in the very nature of things, must be abandoned to the mortgagees or so run that they will cease to fulfill the purposes for which these laws were passed and this money taken from the Treasury of the United States for the accomplishment of the great work. Yet with this enactment that $175,000,000 at least shall be gathered by these roads off the traffic on them in twenty years, this bill goes further and for the security of this exaction mortgages every particle of property that these railroads now or hereafter may possess, not only for the fulfillment of the yearly exactions of this bill but for the ultimate payment of this debt in 1898. Let me read. The ninth section of the bill is in these words:

> That all sums due to the United States from any of said companies respectively, whether payable presently or not—

That includes not only the yearly exactions but includes the ulti-

mate payment in 1898 of all the bonds of these roads. All the sums due to the United States, "whether payable presently or not"—

and all sums required to be paid to the United States or into the Treasury, or into said sinking fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien—

That is, a mortgage—

upon all the property, estate, rights, and franchises of every description granted or conveyed by the United States to any of said companies, respectively or jointly, and also—

And this is what I particularly desire to call the attention of the Senate to—

and also upon all the estate and property, real, personal, and mixed, assets, and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon.

Therefore, sir, though the roads pay punctually and faithfully every dollar exacted by this bill year by year into the Treasury of the United States, still every dollar of the assets and of the income of each company is pledged, and must, or this act will be violated, be kept till the end. Not a dollar of dividend can be paid, though every obligation of this bill shall have been fulfilled to the letter year by year. Every dollar of income from these roads, if it is in the power of Congress to put a mortgage on another man's property without his will, is pledged and must be kept, and this law is violated if it be not kept, till the end. Who is to run the roads? Who is to maintain them? Whose capital is to remain in these roads for twenty years idle and unremunerated? Certainly I do not exaggerate the meaning of the words of this bill, if I know what they are. The law before this bill provided that all the property received from the United States, but none other, should be under mortgage for the fulfillment of the companies' obligations, and then authorized the Secretary of the Treasury, only in case of default, to enter upon and take possession of such of the property as was then in the possession of the companies, leaving them to dispose of the land, leaving them to dispose of any other property that they might acquire, as they saw fit. But this not only puts a mortgage for twenty years upon all property derived from the United States in the language of the old law, and not only upon all property, in the ordinary sense of the term, acquired from whatever source, but upon all income by name, however derived. If I know what may be the force of a lien or mortgage, it sets it apart, renders it utterly impossible for either company, though it has fulfilled every other provision, every exaction of this bill, to make a penny dividend; it cannot sell an engine; it cannot part with a foot of land. Whatever it may acquire hereafter is stamped, if it be in the power of Congress to stamp it, although the highest courts of many of the States have declared it to be an impossibility for creditor and debtor together to put the stamp of a mortgage upon after-acquired property. The language of this bill and the power asserted in this bill go to the length, not only of covering every dollar of property now held, but all the companies' income.

With all these elements, the nature, effect, and tendency of which are to breed dissatisfaction and discontent with the sinking fund thus established, the Judiciary Committee by their bill, as if to mock certainty and security, as if to hold it up as a thing least to be sought after, and as if to make it certain as an invitation in every contingency that may hereafter arise to every spirit of gain or of hostility to this purpose, not only base their sinking fund upon the theory (with which I am not quarreling at this moment) that Congress has

the absolute control over it, can create it and can unmake it at its pleasure, but lest anybody might infer the possibility that the sinking fund stood upon some more secure basis than that, they expressly provide in the bill that any future Congress may at its will turn it over, pervert it, repeal it, amend it, abolish it, appropriate its money to any other purpose they please.

Of course these do not seem to be very weighty objections in the mind of the Judiciary Committee, and they may not have any weight in the mind of any other Senator; but, sincerely desiring myself to accomplish the end sought by these bills and to be sure that it has been accomplished, I have found no other way that satisfied my mind so well as to vote a sinking fund, out of the control of either the debtor or the creditor alone, to make the accretions to it such as to be sure and certain that those accretions shall every year exceed the accumulations of interest and yet so moderate while keeping them certain that their burden shall not create discontent and dissatisfaction and that their exactions shall not tempt and provoke opposition and effort for relief from the sinking fund itself. And yet, sir, I find that the chief merit of this bill is—what? I hear Senators argue that they would rather give it up and lose the whole debt than to lose the very element of insecurity. I hear Senators say that rather than fix this sinking fund so that it shall be beyond the reach of a majority hereafter it were better for the Government to lose the entire debt. I have to ask Senators if really there is, in the idea that the Government of the United States can make a contract that shall bind it, anything so alarming to the liberties of this nation that it were worth while to give up so much rather than concede it? Is it, after all, the fact that no Congress can bind its successor, as I understood the Senator who reported this bill to say in the course of the debate, that no Congress can bind its successor; that it is not in the power of Congress to do so; that it is worth while to hold up to the people of the United States the fact that there is no force in the spirit of the express, positive inhibition in the Constitution of the United States against violating contracts, because it does not specifically apply to Congress? Have Senators quite considered how far this carries them; how little it is within our power to maintain the Government for an hour if we abandon the idea that it can make a contract that shall be inviolate in the future, that must be adhered to, if you adhere to good faith and honor? But Senators think that rather than admit—I do not say how at this time—the principle that the Government shall be able to bind itself and bind future Congresses so that they cannot in honor and in good faith violate that contract, they would give up this whole thing! I submit that it is within the power of Congress to fix this sinking fund upon a basis that will abide, which will abide, too, whatever may be the contingencies of the future; which will abide in the forum of the Supreme Court of the United States, where contracts are enforced; and I think it is our duty to so base it that it will stand.

The Judiciary Committee, in arguing in support of their measure and in support of the idea that the best element of it is the fact that it keeps the control of the matter in the majority of Congress, have sought to meet every suggestion that possibly the majority might be hostile to the bill itself and to the fund itself with ridicule and with denunciation. The Senator from Michigan [Mr. CHRISTIANCY] was eloquent in what he described and what he wished us to understand to be the confidence necessarily to be reposed in the majorities of Congress, that everything under the Constitution rested upon ma-

jorities, and the presumption was that majorities acted justly and properly. And when the Senator from Ohio on my right [Mr. MATTHEWS] spoke of the danger of trusting individual rights to the caprice of the majority he turned in astonishment toward the Senator from Ohio and said that the Senator from Ohio had used the word "caprice" in a sense exceedingly offensive to any idea which the Senator from Michigan entertained of the actual tendencies of the majorities in Congress, and said that he might as well call majorities in Congress lunatics as to speak of any danger that might exist to the rights of individuals in the majorities in Congress. I should have been exceedingly impressed with the eloquence and force of the argument of the Senator from Michigan had he not been equally forcible and eloquent in denouncing the course of those same majorities in the past when he called attention to the fact that the majorities in the past had pursued a course which astonished the nation; and he even went so far as to hint at the fact that in 1864 Congress had been induced by bribery to the course which it had pursued. Sir, he broke entirely with me the whole force of any confidence which he might otherwise have inspired on my part in the action of future majorities by expressing his indignation at the course of majorities in the past.

Mr. EDMUNDS. May I ask the Senator from Massachusetts, who has been commenting on the ninth section of the bill reported from the Committee on the Judiciary as raising difficulties and doubts, and so on, to persons interested in these companies, to explain to the Senate the substantial difference between the ninth section of the bill reported from the Committee on the Judiciary and the fifth section of the act of 1862, which declares as to the money advanced by the United States that the very fact of its advance "shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description" of the companies?

Now the Senator says that this ninth section declares that the right of the United States to its debt as well as the sinking fund shall constitute a lien on all the property of the companies and on their income, which he seems to lay stress upon. The Senator of course can see that in respect of this sinking fund itself, the duty to pay into that is not provided for by the act of 1862, because the act of 1862 does not create the sinking fund, and therefore of course it is necessary, if you mean to be in earnest about this business, to say that this debt to the sinking fund of so much a year not to exceed 25 per cent. of the net earnings shall constitute a lien. But in respect of the other part of the debt to the United States, what is the difference between the ninth section of this bill and the fifth section of the act of 1862 which says that the money advanced by the United States shall constitute a first mortgage—now a second mortgage by the act of 1864—upon all the "property of every kind and description" of the companies? Is not the income of a company, that is its tolls, a part of its property; and is it not therefore merely re-enacting the fifth section of the act of 1862 with the addition that this duty to pay into the sinking fund shall be also a lien, bringing it all together?

Mr. DAWES. I will answer the Senator if he will first tell me what is meant by the next line after where he stopped: "and in consideration of which said bonds may be issued."

Mr. EDMUNDS. The next line where?

Mr. DAWES. You stopped at the word "description."

Mr. EDMUNDS. "And in consideration of which said bonds may be issued." Now before the Senator answers my question he wishes me to answer him one. Is that it?

Mr. DAWES. I ask the Senator what is his understanding of the meaning of this line?

Mr. EDMUNDS. After the Senator shall have explained to me, in answer to my question, I will try to explain to him.

Mr. DAWES. We will not stand upon the order. I understand the difference between the act of 1862 and the bill to be just this: that the act of 1862 proposed to make a mortgage upon everything that was obtained from the United States, and I infer it from these particular words:

> Shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued.

Whatever the United States grant in consideration of the issue of the bonds is subject to the mortgage.

Mr. EDMUNDS. That, as the Senator states it, "in consideration."

Mr. DAWES. Will the Senator tell me what is the meaning of this line? He asked me the difference. The difference I think is—and I infer it from those lines I have read, which are very blind and hardly intelligible—that in 1862 Congress never undertook to put a mortgage on anything except that which they granted to the railroads and furnished them the capital to purchase. That is the form in which they undertook to express that idea in the line which I have read.

Mr. EDMUNDS. Supposing that to be so—and I do not say whether it is or not—what was it that the United States granted to the company? Was not one of the things that it granted to this company the power to take tolls, to gather in money for traffic? That was one of the franchises of the company. That even the Senator from Georgia, with his entirely novel views about the law, concedes to be within the power of Congress to regulate and repeal under the reserved power. What is this franchise, then? One essential part of a franchise—it is not all of it, but the most valuable part of a franchise except that of taking private property—is the right of taking tolls from the public for doing a public business. The tolls, therefore, the right to take tolls, the money got from tolls, came from the authority of the privilege granted by Congress to these companies to build their railroad and to operate with the public and receive from the public an income for doing it. They are the tolls. Now the statute says that every kind and description of the property of the companies shall be the subject of this first lien of the United States, now by the act of 1864 the second lien. Now the Senator reads "and in consideration of which said bonds may be issued," and he says that is very blind. I do not think it is blind at all. That is to say, there is authority to the Secretary of the Treasury from time to time to issue the bonds of the United States in consideration of the fact which the law declares that every particle of the property of these companies, real and personal, franchises, everything that is property, tolls, and everything else, are the security, and that being so, the Secretary of the Treasury in consideration of that may issue these bonds.

It does not require a vast amount of scholastic education, as it appears to me, to understand that simple proposition. These bonds may be issued in consideration of what has been previously stated, and that is that everything that the companies may obtain in the nature of property is made subject to the duty that the law of corporations everywhere without it would make the duty of the corporation to devote to the payment of its debts. That is all there is to it.

My honorable friend, who is familiar with that excellent book in New England, Angell & Ames on Corporations, and that excellent English book, Kyd on Corporations, must know that according to those authorities and by the decisions of courts without a difference anywhere, every particle of the property of a corporation, whether it is in money, or in tolls, or in rights, or franchises, or whatever it may be, is a trust fund first devoted to the duty of paying its debts, after that to the duty of dividing it among the persons who have engaged in the operation.

Mr. DAWES. That is quite a different subject.

Mr. EDMUNDS. I do not think so. It is quite the same subject.

Mr. DAWES. I admit that the franchise was mortgaged.

Mr. EDMUNDS. Well, what was the franchise?

Mr. DAWES. Mortgaging the franchise does not mortgage what can be made out of the franchise. The franchise is held by the mortgageor for his use until default, and what he can make out of the franchise until default is his unless the terms of the mortgage cover not only the franchise but the income and use of it. I mortgage my farm to the Senator from Vermont and unless I expressly mortgage the income of that farm its income he cannot exact from me.

Mr. MITCHELL. I suggest to my friend from Massachusetts that the very act that authorizes the mortgage of the franchise does specially mortgage a special amount of the income, 5 per cent. and no more.

Mr. DAWES. Mr. President, it is perfectly plain, that without express words in the mortgage that the income of this road is also pledged to the fulfillment of the obligation in 1898, you cannot hold it and recover it out of the hands of a stockholder when paid in the form of dividends; and the Senator from Vermont knew that when he used the word "income" in this bill. He knew he had added something, and he knew that when he added "from whatever source derived" he had added something. He knew that he had made a broader mortgage because he had used broader terms. There is nothing in the terms of the statute of 1862 that can be construed by any fair interpretation to embrace any after-acquired property any more than income, and the Senator from Vermont does injustice to himself when he says that all these additional words are words of no effect, put in here without any occasion for their insertion.

Mr. EDMUNDS. I have not said anything of the kind, Mr. President. The Senator will excuse me. The Senator says that the act of 1862 is only a mortgage upon existing property at the date of the passage of the act. Now, at the date of the passage of the act, I take it that the existing property of the Union Pacific Company was *nil*. It had not even the land grant until it accepted it. It had not any railroad line. It had not the iron or the ties or the embankments or the cuts or the bridges or the grading.

Mr. DAWES. If I said "the passage of the act," the Senator must have understood me to mean when the act went into effect.

Mr. EDMUNDS. Very well; that is what I mean by the passage of the act, when it went into effect, of course. Very well. When it went into effect the company had not any track; it had not any cuts; it had not any bridges; it had not any cars or engines or anything whatever; and yet the statute says that this shall be a mortgage upon every description of the property of the company; and the Senator says that after-acquired property is not the subject of such a mortgage. I beg most respectfully to differ from the Senator. The plain import of this section is that everything that the company may have

at any time, that it gets under the authority of the act that creates it, or in respect of the Central Pacific that authorizes it being an existing corporation of a State to go into the Territories of the United States and build a railroad, shall be the subject of this lien; and if the Senator says that after-acquired property does not fall within that section and is not therefore a security, he says in effect that there is no security at all. That will not do. The law about after-acquired property, which has been settled over and over again in every court that has considered it, has been that where a railroad mortgage made to private citizens, to private persons, who advanced their money, in its terms went beyond the track and the line and the right to run the line, as distinguished from the tolls, and said that it should be a mortgage upon all the property of the railroad company of every description, it was a mortgage upon after-acquired property; that it spoke all the time; and that when one engine was worn out by the company and another one built, the new engine was just as much the subject of the mortgage as the old one.

And let me suggest to my friend also that courts of equity everywhere according to my information—I may be mistaken; I do not pretend to be so versed in the law as he is—have held that the income, by name, of a railway company is just as much in a court of equity the subject of a mortgage and is just as much to be devoted to the payment of its debts as its real estate. The only question would be in any of those cases whether that income was to be applied to the first mortgage or the second or to the general creditors, and in what order; but that every creditor according to his right and according to his priority had upon the general principles of the law of corporations a lien upon every item of property of the company, whatever you call it, never has been denied that I know of.

Mr. DAWES. Mr. President, I am aware that courts have decided that the income of a corporation can be mortgaged, and I think it was because the Senator knew that that he concluded he would mortgage it. He had not done it up to that time; the Legislature had not done it; the Senator was disposed to do it and he put it in the bill.

The Senator says that when the act of 1862 took effect the company had not any land, they had not any property, they had not any rolling-stock. Does not the Senator understand that the act took effect by sections; that they built a section of the road, and then had property, then had land, then had bonds, in consideration of the receiving of which and of property from the United States a lien was *ipso facto* fastened upon all the property which they themselves received, qualified, however, by this statement in the same section:

> And on the refusal or failure of the said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States;

Making the exception lost sight of in the bill before the Senate, extinguished by the bill before the Senate, that the property, after all, to be taken possession of for default of the company was the property undisposed of by the company, so far as its lands were concerned, at the time the default should occur. Now, sir, all of that property is by this bill put under a lien that cannot be lifted for twenty years. Every acre of its lands as well as every dollar of its income is put under a lien that fastens and holds it for twenty years; and the bill in another section provides further for making it a peni-

tentiary offense in any director, officer, or stockholder who shall vote a dividend in violation of this act, and every dividend received by a stockholder in violation of this act may be recovered back in an action.

When I was interrupted I was calling attention to the perfect satisfaction which seemed to have taken possession of the minds of the Judiciary Committee, if they could impress upon the country that they had established a sinking fund that has no security against the future action of Congress. They have not only taken pains to base it upon the theory that it is impossible to make it so that any future Congress cannot undo it, but they have invited interference with it by express invitation in the act itself; and the Senator from Michigan has gone on eloquently to assert the perfect confidence he had in future majorities while condemning in denunciatory language the conduct of majorities in the past. The Senator from Ohio, who reported the bill, said that it was a perfect answer to this suggestion, that nobody in the interest of the people for the two or three years this bill had been before Congress, had ever shown himself here to lobby in favor of such a measure, while the lobbies and corridors of this end and the other of the Capitol were crowded with those who were exercising or attempting to exercise undue and improper and corrupt influence against this measure; and the Senator from Vermont, rising still higher in the argument, declared that the only danger that could possibly arise, that could possibly imperil this sinking fund, was the corrupt influence of these roads themselves, and their friends and the holders of their securities, and he went so far as to say that he had ascertained just what they had expended by the line and paragraph and column in the newspapers in influencing public sentiment against this bill, and said that the time would come when Congress would investigate it.

I go heartily with him in all that work. I have seen as much of it as the Senator; I denounce it as freely as the Senator; I will investigate it as long as the Senator; but I tell the Senator that the danger is not all on one side. The Senator has seen no other influence. Cannot the Senator see that those in the interest of competing railroads may derive an advantage by securing such burdens to rest upon the traffic on this road that it will be utterly impossible to compete with transcontinental roads that have no such burden, and the greater the burden the surer the success in competition against this road? The Senator can see and feel no influence around these corridors and upon these halls that has a tendency to stimulate legislation that shall increase and make more grievous the burdens laid upon the traffic over this road for the advantage of competing roads! Sir, the innocence and confidence of the Senators that compose the Judiciary Committee who see no danger upon one side is equaled only by that of the ancient character in the fable who kept her blind side turned toward the sea ever and looked out for danger only upon the land. The fable tells us that nevertheless she fell, and I say to the Senators that, although now the public sentiment is such toward these roads that there may not be in this hour any danger except on the side of the land, yet in the disguises and devices and plans and schemes of the future neither they nor any one else can be quite sure that upon this very blind side itself may not be the very approach that will prove fatal to this whole scheme.

Sir, in attempting to establish this fund and to justify this legislation, the Senator from North Carolina [Mr. MERRIMON] brought forth an argument of another kind. He presented for the consideration of

the Senate as a reason justifying severe measures toward these roads the fact that those who contracted with the companies to build them had cheated the roads themselves, and he paraded here in support of that argument the enormous profits made out of the roads themselves by those who contracted with the companies to build them. Precisely the same argument and for the same purpose was used here in another debate. You will find in a speech delivered by the Senator from Kentucky [Mr. BECK] on the 12th of January a table showing the enormous profits made out of the Government of the United States by those who dealt with the United States in the beginning in the purchase of her bonds. I do not know how accurate the table is; I think I have seen it in at least thirty speeches this winter. It had its origin five or six years ago, and it is always used with precisely the same aid to argument. The position, as I understood it, of the Senator from North Carolina was that those who contracted with these railroads had made enormous profits out of them, and that lent some sort of support to measures that otherwise would not be entirely justifiable. The table to which I allude shows that those men made the enormous profit of $1,012,500,000 out of the United States in the purchase of the bonds of the United States; and upon the same parity of reasoning some support to a particular treatment by the United States of those bonds is derived from the fact that those men are alleged to have made an enormous profit out of them. So I understood the argument of the Senator from North Carolina to be that the men who built these roads for the roads themselves, no matter by what sort of unjustifiable machinery it was done, had made thereby enormous profits out of the roads, and we could well treat the roads in the light of that fact.

Mr. MERRIMON. I do not suppose the honorable Senator from Massachusetts desires to place me or anything I said in a false light. What I said was this, and I think it was legitimate, that it was proper that we should inquire into the history, the practices, and the spirit of these corporations in order to enable us to determine what measures we ought to take for the protection of the Government; and it was in that view that I referred to their history and their practices and to the spirit manifested by them. As I understand, the principal stockholders in the Central Pacific Railroad Company, particularly at the time the frauds were pepetrated on the Government, are the same stockholders now, and that in very large measure the stockholders in the Union Pacific are the same. But whether that be so or not, I maintain that it was fair, legitimate, and proper that the Senate should inquire into the history, the practices, and the spirit of these corporations in order to determine what legislation is necessary for the protection of the Government. If we find that they perpetrated frauds on the Government; if we find that they have been obstinate and are so now, that they are insolent in their demands, then surely that is an argument which addresses itself to us in favor of measures that are vigorous and strong and decisive; and it was in that view that I referred to their history. I did not desire to do them an injustice. I am very sure I did not. I would not deprive them of one dollar of their property to-day. But in the exercise of the power reserved to Congress, and which is in Congress even without reservation, I do say that Congress owes it to the Government and to the people of the Union to provide a measure by which they can be protected.

Mr. DAWES. I do not understand the explanation of the Senator from North Carolina to militate against anything I have said. I understood the purpose of the Senator to be, as he states it, to show

that those who built the roads for the corporation had made enormous profits, and had done it fraudulently, out of the corporations.

Mr. MERRIMON. No, sir; I do not care what they made, if they made it legitimately they are entitled to be protected. That weighs nothing with me.

Mr. DAWES. To show how utterly unsafe a sinking fund of this character is if left to the changing sentiment of the majority, to which I have already alluded, I want to call the attention of the Senate to another fact. The Committee on the Judiciary themselves, since this matter came under their consideration, have changed their views three times. The first report from the Judiciary Committee upon the subject of the relations of the Government to these roads concluded in these words:

> Your committee were not called upon to criticise the wisdom of these acts of Congress, but to answer as to their true construction; and, in discharging this duty, the committee is obliged to report the law as it is, without regard to what they might desire it to be. It is proper, however, to suggest that the company is clearly bound to keep its road in repair and in use; and any failure of the company in this respect would authorize the Government to take possession of the road. The refusal of the company to perform the services for the Government provided for by the sixth section, or to appropriate 5 per cent. of its net proceeds, would also authorize the Government to take possession. But while the company shall continue to comply with these requirements, the Government, if it has not all the security it might desire, has all it ever stipulated for, and has no right to complain. And at the maturity of the bonds, if the company fail to pay principal and interest, the Government may take possession of the road, which the company, in the mean time, must keep in use and repair.

Mr. EDMUNDS. Will the Senator be good enough to tell us in answer to what resolution of the Senate that report was made; whether it was not a resolution directing the Committee on the Judiciary to report the existing state of the law without any reference to any power of Congress to change it?

Mr. DAWES. Very likely it was.

Mr. EDMUNDS. "Very likely;" but you had better state it.

Mr. DAWES. I state it so far as I am able to state it from the report:

> The Committee on the Judiciary, who were authorized by resolution of the Senate of December 9, 1870, to inquire and report whether the railway companies which have received aid in bonds of the United States are lawfully bound to reimburse the United States for interest paid on such bonds before the maturity of the principal thereof, and, if so, what legislation, if any, is necessary to compel such reimbursement; and by resolution of February 16, 1871, were instructed to inquire and report as to the right of the Treasury Department to retain all the compensation for services rendered for the United States by the Union Pacific Railroad and its branches, to apply on the interest of the bonds issued by the United States to aid in the construction of said roads, respectfully report.

And among other things they report this:

> But, while the company shall continue to comply with these requirements, the Government, if it has not all the security it might desire, has all it ever stipulated for, and has no right to complain.

And its remedy is that—

> At the maturity of the bonds, if the company fail to pay principal and interest, the Government may take possession of the road which the company, in the mean time, must keep in use and repair.

Mr. EDMUNDS. The peculiarity about my friend's reading, which he did not intend undoubtedly, is that he has imported from his own inner consciousness into his reading two or three words.

Mr. DAWES. What are those?

Mr. EDMUNDS. Where he proceeds to say that its remedy is at the end of the time to do so and so. I am not able to see that in the report.

Mr. DAWES. I wish to be entirely fair and frank——

Mr. EDMUNDS. I know my friend does, or I should not have interrupted him.

Mr. DAWES. I did not suppose anybody who was looking at me would presume when I said "that the remedy is" that I was reading those words from the book. I had once read the report of the committee, word for word, just as it is in the book already, and, after reading part of it again, I said "the remedy is," and then I read:

> At the maturity of the bonds, if the company fail to pay principal and interest, the Government may take possession of the road which the company, in the mean time, must keep in use and repair.

If the Senator inferred that I meant to use those words "the remedy is" as part of the report, it is due to him that I should disabuse him of that impression.

Mr. EDMUNDS. I did not myself make that inference; but any person in the public reading the RECORD to-morrow would suppose that that committee has said that "the remedy," that is to say the only remedy that Congress had, if they were not satisfied with the existing state of things, was to wait until the bonds mature. That the committee never said and were never called upon to say and never intended to say.

Mr. DAWES. I want to read it once more, and if the Senator has not confidence in my reading he may look over me.

Mr. EDMUNDS. I have entire confidence when you read.

Mr. DAWES:

> But, while the company shall continue to comply with these requirements the Government, if it has not all the security it might desire, has all it ever stipulated for, and has no right to complain. And at the maturity of the bonds, if the company fail to pay principal and interest, the Government may take possession of the road which the company, in the mean time, must keep in use and repair.

If that is precisely the same position that the Judiciary Committee occupies now, then I have misunderstood the two positions.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. DAWES. Yes, sir.

Mr. EDMUNDS. In order not to misunderstand my honorable friend from Massachusetts, whose sincerity I do not doubt, I wish to ask him if he understands that report to mean, in answer to that resolution asking the committee to report what the state of the law then was, that Congress had no power to change the regulations that already existed in respect of security to the public interests and to private rights?

Mr. DAWES. I understand the report to mean precisely what it says.

Mr. EDMUNDS. That does not answer the question.

Mr. DAWES. When it said that the United States determined what security it would take for what it gave, and if it did not take enough had not any right to complain, I did understand it (and the Senator must take my answer as explicit) to mean the common notion that when they made their contract they ought to be satisfied with it.

Mr. EDMUNDS. The Senator entirely misunderstands the report, then.

Mr. DAWES. That was one position occupied by the Judiciary Committee. Two years ago the committee reported a bill——

Mr. THURMAN. I do not want to interrupt the Senator if it is disagreeable to him, but I should like to say one word on that first report.

Mr. DAWES. I shall be through this point in a moment and then the Senator can do so.

Mr. THURMAN. It is in reference to the report that he has just read from that I wish to say a word.

Mr. DAWES. Very well.

Mr. THURMAN. That report was made under these circumstances: under the law as it stood at that time and as it now stands, the Government agreed to pay to the companies one-half of the transportation account. That, I say, is the law, and that will continue to be the law if it should not be altered by Congress. Mr. Akerman, the Attorney-General, gave an opinion that the Government might offset against that half of the transportation account due by it to the companies an equal amount of the interest which it paid on the subsidy bonds upon the law of offsets. It was distinctly upon that ground as a right to offset what the Government had paid for the companies upon the subsidy bonds against what the Government owed the companies for transportation; and the question was whether the Government had that right of offset as the law then stood. That was the whole question that was referred to the Judiciary Committee. It involved simply a consideration of what was the law then, and no question whatsoever of what ought to be the law, no question whatever of the power of Congress to alter, add to, amend, or repeal the charter. No such question was in the remotest degree involved in that inquiry. The Judiciary Committee reported that as the law then stood the right of offset did not exist, that the companies were not bound to pay the interest until the maturity of the bonds.

The only question that was submitted to the committee was whether the Attorney-General's opinion was correct. The Judiciary Committee of the Senate reported that that opinion was erroneous and that under the law as it then stood the Government was bound to pay the half-transportation account to the companies annually, and they accordingly reported a bill requiring the Secretary of the Treasury to comply with the law. That bill passed this body. The Judiciary Committee of the House reported the same way, and the bill passed the House. Two years after, there being much dissatisfaction with the conclusion at which the two committees had arrived, and at which the two Houses had arrived, in order to raise the question for judicial determination, another act or resolution was passed, directing the Secretary of the Treasury to withhold the half-transportation account, and authorizing these companies to bring suit in the Court of Claims so as to test the question judicially. That was done. The money was accordingly withheld, simply for the purpose of making a judicial question for the determination of the courts. The Court of Claims decided as the two Judiciary Committees had decided, and as the two Houses had decided; and, on appeal, the Supreme Court affirmed that decision. That is all there is of it.

Mr. DAWES. Doubtless the Senator has stated the circumstances under which the Judiciary Committee submitted the report, and I think I have stated accurately the language of the report. I wish to call attention now to the fact that two years ago the Judiciary Committee reported a bill to this effect:

*Be it enacted, &c.*, That the net earnings mentioned in said act of 1862 of said railroad companies, respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary and actual expenses of operating the same and keeping the same in a state of repair, and not otherwise, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of 1864 as well as of said act of 1862.

Now, in the bill before us, they have changed their mind since then; they use the following language:

That the net earnings mentioned in said act of 1862 of said railroad companies, respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness.

The *personnel* of the Judiciary Committee has not changed more during the years that these three positions have been entertained by that committee than the *personnel* of Congress and the *personnel* of Congress in the future; and, if these three positions of the Judiciary Committee are not alike, it only shows that in the few years that have transpired since this matter has been before Congress for adjudication the Judiciary Committee have changed their minds and altered their ideas of what would be just and fair and proper for the sinking fund about to be created. Two years ago they were of opinion that the sinking fund should include the net earnings substantially, this very interest which they think now, for reasons they have given, ought to be excluded from the sinking fund.

Mr. THURMAN. May I interrupt the Senator there?

Mr. DAWES. Certainly.

Mr. THURMAN. If the Senator will look at the bill reported two years ago he will find that practically there is very little, if any, difference between that and the present bill in the particular to which he refers, because it was expressly provided in that bill that if in any year 75 per cent. of the net earnings of the road, as defined in the first section, should be insufficient to pay the interest upon the first mortgage, then the Secretary of the Treasury was bound to make an abatement so that that interest would be paid. Thus under that bill, and under this bill, the provision is complete for the payment of the interest on the first mortgage before there can be anything paid into the sinking fund.

Mr. DAWES. I understood the Senator himself to call the attention of the Senate to this change in the provisions of the bill and to give a reason for this change and modification. I do not speak of it in reproach or criticism. I only allude to the fact that even the Judiciary Committee of the Senate have changed their views in relation to what should constitute this sinking fund, and being at perfect liberty, as they say, in any year that is to come between now and 1898 to alter, amend, or repeal this law, what assurance can we have that Congress itself will not undergo as much change as the Judiciary Committee, whose *personnel* certainly is as conservative and as certain as that of Congress itself? That is the force of the argument, if there be anything in it.

The very treatment which this committee have given the subject is the evidence itself that in the years that are to come the changes in the relation of these roads and this fund to the public and to the United States are certain to be such as to tell upon its security and its permanency.

Before I sit down, I wish to call attention to the fact that in support of this bill the position is taken that it is necessary to provide protection against the contemplated acts of bankruptcy on the part of these roads. A bankrupt act cannot be enacted in Congress applicable to a single estate. A bankrupt act to be constitutional must be uniform and applicable to all estates and to all persons. Let me

read what the Senator from Tennessee
the reasons for justifying the enactment

Now, may not the remedy be advanced witho
If the conduct of the officers manifests an unmis
poration to a state of bankruptcy, if they shall re
nary rules of business prudence and care, the ne
provide a sinking fund for the payment of debts to
not otherwise be paid. Can they with any propriety
power shall require them to do so or provide a remed
itor against a meditated wrong?

That is an attempt to make applicable to a s
ciples of the bankrupt law, and I can find no a
ernment of the United States to enact any other t
of bankruptcy. The cases which the Senator cite
and Georgia I desire to read to the Senate, and see
to this bill. The Senator says:

apply

In my State and the State that is represented by the honorable Senator from Georgia, we have a law providing that, if a debtor in anticipation of the time of payment of a debt is making a fraudulent conveyance of his property with a view to evade the payment of that debt, the creditor may sue out an attachment and impound the property and hold it—

Hold it how, Mr. President?—

under the jurisdiction of the courts until the debt shall become due. This is statutory law; but has anybody ever questioned the power of the Legislature to enact such?

Most certainly not. If this Legislature should provide a tribunal into which these railroad companies could be summoned upon an allegation that they were about to make conveyance of their property for perversion of their funds, to the defrauding of their creditors, and the court should be clothed with power to pass judicially upon that question, it would meet the Tennessee and the Georgia statutes, and not otherwise. But that is not the proposition in this bill. The proposition in this bill is to find the fact here and adjudicate it here. It is based upon the allegation here in this body that these roads are about to make fraudulent conveyances and to commit acts of bankruptcy, and then to pass judgment here. The Senator from Vermont has brought this out more strongly in the manner in which he states it:

Mr. EDMUNDS. But the Senator from Georgia carefully leaves out the proposition that I put to him, that upon the universal principles of law applied to corporations, no matter whether you have a mortgage security or not, every dollar of the assets and income of a corporation is a trust fund for the payment of its creditors first, and for division among its stockholders afterward. Therefore, if a corporation, without regard to whether there is a mortgage lien or not, divides up its earnings among its stockholders to the danger of its creditors, it is violating the law of its existence.

And the Senator from Tennessee [Mr. BAILEY] adopts this language and says:

But there is another reason which has been alluded to by the Senator from Vermont, or which was alluded to a few months ago, why this legislation may take place. He stated, and he stated what is unquestionably the law, that the property of every corporation is a trust fund for the payment of its debts, made so by intendment of law.

True, but does that authorize Congress to administer the trust? Does that authorize Congress to constitute itself into a court and judicially decide whether the trustee is perverting the fund or not? It is perfectly competent, I doubt not, for Congress to erect, if there is none as yet, a judicial tribunal into which we can summon this corporation or anybody else clothed with a trust, upon an allegation that it is perverting the trust, but it is a judicial tribunal, and not a legislative one, that must administer trusts. The legislative author-

ity may establish the trust, the legislative authority may define the powers of the trustee, the legislative authority may declare that certain acts shall constitute a perversion of the trust; but whether those acts have been performed or not, whether that trust has been perverted or not, whether the trustee is false to his trust or not, is a judicial question and must be decided in a tribunal where the parties can be heard and can deny, if they please, the allegations upon which this whole bill rests, if it rests upon the claim of a trusteeship at all.

Mr. EDMUNDS. Mr. President, does not my friend's conclusion about that depend a little on an underlying question, as to whether the legislative authority over this corporation in this particular case and other corporations in other cases to declare a foundation for such a trust and require a duty of paying in it, is the exercise of constitutional authority; in other words, whether there does not reside in the legislative power of visitation of public corporations or quasi-public corporations created or authorized by it to do particular things, the authority to direct how much of the corporate funds shall be divided among the stockholders, and so taken away from the creditors, and how much, as in Massachusetts, shall be paid over to some hospital or whatever it may be? If there is the legislative power of visitation and requirement, then undoubtedly under that just as under this bill it remains for the judicial authority to carry into execution and enforce the provisions which the legislative authority has made.

Mr. DAWES. I had stated just exactly the qualifications which I understand the Senator from Vermont to restate for me in so much better language.

Mr. EDMUNDS. Then we agree.

Mr. DAWES. I stated that it is competent for the legislative power to define the trust, to declare what it shall be, to declare what shall be the penalty for the violation of it, what the trust has been established for. The relation between these roads and the Government, according to the theory of the Judiciary Committee bill itself, is that of a trustee and *cestui que trust*. The Government is to hold this fund in trust for the creditors and stockholders. It is to hold it according to established law and liability. No new liability not existing before can be imposed upon the companies inconsistent with the terms upon which they accepted the trust without violating the contract upon which they accepted it. I do not understand this requirement to be based upon any such ground as that, but upon the simple ground that they are trustees holding trust funds, and therefore, if they undertook, as the Senator from Tennessee said they were proposing to do, an act of bankruptcy, dividing up in the shape of dividends funds which belong to creditors and stockholders, doing that act or proposing to do that act which he styled an act of bankruptcy at one time and a perversion of trust at another, they are to be visited with this law. I say that if you have not a court of sufficiently broad jurisdiction to call them to an account, it is your duty to make the court, and not assume the judicial function here, because it depends upon questions of fact and of law, to be judicially determined, whether they have committed the act of bankruptcy or breach of trust, or contemplated committing either, which are made the foundation and justification for the law itself.

I have tired the Senate, I am conscious. I have very imperfectly presented what seem to me to be some objections lying essentially at the bottom to the sinking fund as proposed by the Judiciary Com-

mittee; not that I have the slightest desire to prevent the establishment of a sinking fund; but I desire that one shall be established which shall last after the disposition now prevalent universally in Congress shall have passed away. I wish to provide a sinking fund that shall outlive any temporary disposition; that shall withstand any change of public sentiment; that shall withstand any encroachments upon it that may be made through corrupt motives, through a false public sentiment, through a crowding of these corridors with the lobbyists of these railroad companies, against this bill or of competing roads for this or any other bill; that shall stand until the purposes of its creation have been accomplished and the indebtedness of these roads liquidated and they stand unincumbered among the monuments of the courage of the United States manifested in time of peril, able to fulfill all of the functions and all of the powers devolving upon this and its sister roads across the continent building up States, developing uninhabited places, making rich and strong the nation in the years that are to come.

Mr. EDMUNDS. If I correctly understand the Senator from Massachusetts he means to maintain that he believes this bill reported from the Judiciary Committee requiring the establishment of this sinking fund to be unconstitutional as a violation of private rights in undertaking to require these corporations, instead of dividing up their profits among their stockholders, to take a part of them and keep them in a safe place for the benefit of their creditors. I ask him if I am right about that?

Mr. DAWES. So far as I discussed the constitutionality of the bill, it was in this way: that if it were the intention of the bill to establish Congress into a court of equity to administer trusts, there was no authority in the Constitution for that purpose; and if it was the object of the bill to provide a special law of bankruptcy applicable to a single estate, there was no authority in Congress for the enactment of any such law.

Mr. EDMUNDS. But, Mr. President, the Senator has not answered my question. I am unable to know from what he states whether he believes this bill to be constitutional or not constitutional. If he does not wish to express an opinion, that is one thing; if he does, I shall be glad to have him state it.

Mr. DAWES. I stated that it was endeavored by the Senator from Tennessee to find support for this bill in the statement that these roads were contemplating acts of bankruptcy and a conveyance of their estates to avoid paying their debts, and if that were so it was just like a law of Tennessee and of Georgia which summoned them into a court and impounded their property until they answered to that charge in court. I answered that reason for supporting this bill by saying that an act of bankruptcy could not be made applicable to this estate alone, and if it were an attempt to administer a trust it could not find any support in the Constitution. Thus far and no further have I discussed the question of the constitutionality of this bill. I do not desire to enter, as I stated in the beginning I had no intention of entering, into any contest or controversy with the Judiciary Committee upon the general power of altering or amending the law of 1862 or of 1864; I was desirous of co-operating with them in obtaining a sinking fund that would have in it two elements; I did not care much about the details beyond that; one element was absolute security, and the other was accretions yearly that would be sure to exceed the accumulations of interest, and with those everything else would follow that I cared for.

Mr. BAILEY. Mr. President——

Mr. EDMUNDS. If my friend from Tennessee will excuse me, I am not able now to understand, what the Committee on the Judiciary I have no doubt would so gladly know, what the opinion of my honorable friend from Massachusetts is as to the constitutionality of the bill, as he understands it, no matter how the Senator from Tennessee understands it or his grounds or mine; but I should be glad to know and the Senate would be glad to know, as the Senator has evidently studied the subject and is a master of all the objections to getting on, what his opinion is as to the constitutionality of this bill in the light in which he reads it. If he is willing to answer, I should like to have the benefit of his views; if he is not, of course I have nothing to say.

Mr. DAWES. Mr. President, I am somewhat weary and it is late in the afternoon. If I am to be put upon the witness stand under the cross-examination of the Senator from Vermont at any great length, I should like to have it done in the morning. If it is essential to understanding what I have said that what I have not said and what I have declined to argue shall be argued by me, in my poor way I will do as well as I can in the morning.

I will say to the Senator that in regard to some features of this bill I should like to have some more satisfactory reason given for their constitutionality than I have yet heard; and to follow his example a moment ago, I think I shall sit down until he has given a satisfactory reason for the constitutionality of some features contained in the Judiciary Committee bill.

Mr. EDMUNDS. Now, Mr. President, I am entirely satisfied with the answer of my friend, because it is perfectly luminous. If he would be only kind enough to point out the features that still are obscure to him, then the committee will endeavor to see what they can do in the way of relieving his doubts; but which particular lineament it is that troubles him just now under the Constitution, he has not been kind enough to tell us, and I suppose he does not want to. The real fact——

Mr. DAWES. I did not hear the last remark of the Senator; but I imagine that he insists upon my making my speech in the way he shall mark out.

Mr. EDMUNDS. Oh, no; far from that.

Mr. DAWES. I have submitted some views. I do not suppose they are worth anything; I did not suppose they were before I submitted them; but there were some reasons which governed me in trying to make a sinking fund that I thought good. I am not to be forced from that line of remarks by anybody asserting any control over me, whatever control he may have over corporations.

Mr. EDMUNDS. Far be it from me to exercise any control over my friend from Massachusetts. He had been kind enough to state that there were some features of this bill that he wished to hear a better reason for their constitutionality than he had yet heard, and my only attempt to exercise control over him, if that was it, was to invite him to tell us what those features were.

If that is offensive, then I apologize with the greatest possible humility. If the Senator has not yet discovered which the particular feature is, we can wait until to-morrow, until he can dig it over again and see where his trouble does lie, if he is not able now to find it. The trouble with the Senator's argument is that he has unhappily missed a discussion of the fundamental ground on which the bill stands even to his own mind, and that is the public power of this nation over public corporations and the particular power

that these very acts creating one of these corporations and conferring privileges upon the other as a part of the contract, if you call it a contract, that the companies themselves have agreed to, that this tribunal should be at liberty according to its judgment and conscience to regulate their future conduct. That is it.

Mr. DAWES. Mr. President, then it is a power of visitation that is exercised here, is it, when you take the property of this corporation and all its future earnings, every dollar of them, and set them apart in a fund to hold for yourself until the end? That is a power of visitation, is it? And that is a proper power for the Legislature to exercise? I supposed that was the very power for a judicial tribunal to exercise. I supposed that was one of the incidents of the supervising power of a court over a trustee. I did not suppose the Legislature would do that.

Mr. EDMUNDS. My friend seems to be——

Mr. MATTHEWS. Will my friend from Vermont allow me?

Mr. EDMUNDS. Not quite yet, if you please. I will take one at a time.

Mr. MATTHEWS. I merely wished to make an inquiry.

Mr. EDMUNDS. But let me dispose of the inquiry of my friend from Massachusetts first. My friend from Massachusetts seems to have studied every part of this question except the particular one to which I addressed my inquiry. Now he comes to the power of visitation, to which I referred, and says he understands that to be a judicial power. So it is in respect to corporations to which the judicial power applies; but if he will only be good enough to look into the works on corporations he will see that in respect of those quasi-public corporations and indeed private corporations that have dealings with the public as a public, like common carriers, millers, &c., there is a legislative power of visitation that does not undertake to decide in the judicial sense of a final winding up and distribution of the assets by an edict, but undertakes to prescribe the duties which such corporations shall perform toward their creditors and toward the public, and which, when that prescription is made, just as in this case when this is made, it will be the business of the judicial power to see is duly carried into effect. That is the distinction which in the haste of my friend's studies he has evidently overlooked.

Mr. DAWES. I suppose that the Senator from Vermont calls this the power of visitation in the first section of the bill, when he defines what shall be the net earnings of this road by providing hereafter the net earnings of this road shall be so and so. The United States lent these roads certain bonds due, say, in 1898, except so far as they should be paid presently by one-half of the transportation account and the 5 per cent. of net earnings. They are due presently to that extent, and as to the remainder in 1898. Now, the creditor steps in and says he has the power to define what shall constitute net earnings; that is, to say how much of these bonds shall be presently due and how much shall be left till 1898. The creditor can say that the net earnings, as the Judiciary Committee proposed in 1876, shall be all excluding interest on the first-mortgage bonds, and therefore they can make more of these bonds payable *in præsenti* than in 1898. When they say that the net earnings shall not include the interest on the first-mortgage bonds, they say there shall not be so much due *in præsenti*. That is to say, the creditor holding the obligation of the debtor is at liberty himself to say how much of this debt is due to-day and how much is due twenty years hence, and he can determine from year to year, the creditor holding the obligation, and I understand

the Senator from Vermont to say that that is the power of visitation. It is the power of visitation with a vengeance!

Mr. EDMUNDS. Well, Mr. President, the power to define what is net earnings in 1876 that the Senator speaks of was in my opinion a clear power of Congress if there had been no provision in the charters and grants reserving the power to control and regulate the management of these corporations, and the Senator will find, if he will turn to the last volume of the reports of the Supreme Court of the United States respecting the exercise of similar powers by the Legislatures of the various States, a great many cases all in a row that arose between States and railroad companies of exactly that character. But there is no inconsistency either in point of theory or in point of practice between what was reported in 1876 and this. In this instance now the committee thought it better to put into what was the definition of net earnings what does not belong to net earnings under any just construction of that term; and if you look at all the railroad reports to their stockholders you will see that we are right about that; they do not put in the payment of interest as a deduction from earnings and strike out a balance. It was to put into that what did not belong to it naturally or legally, a power in these corporations to apply as a part of their net earnings, before the lien of the other creditors would come in, this money necessary for the payment of interest on the first-mortgage bonds, for the reason of simple policy and good sense that if this money was thus applied, as another section of this act provides it shall be, to the payment of the interest on the first-mortgage bonds, then they had applied it to the very uses to which it ought to be applied instead of dividing it among their stockholders; and so as a matter of convenience that addition to the true meaning of net earnings was put in. If the Senator has any fault to find with that as a practical matter, that is one thing; I do not suppose he has; but if he refers to it as an evidence that the opinion of the committee has changed at all in respect either of the theory or the policy of what these companies are not to divide among their stockholders but are to pay to their creditors, then he is vastly mistaken.

But now the Senator comes back again to the power of visitation which he calls the power of visitation with a vengeance. He says it is the right of the creditor at his will to say how much of the debt shall be due to-day and how much due to-morrow. Mr. President, I wish to state once more that the Senate of the United States, in my opinion, is not the creditor of these corporations any more than the judicial tribunal that sits next door to us is the creditor of these corporations when it in the exercise of its functions has to deal with them. We are not the creditor of the corporations in any earthly sense, either theoretical or practical. We are, unless we have been dealt with as I am sure no Senator has by these corporations themselves, a perfectly indifferent and impartial tribunal, to whom the corporations that accepted these privileges and benefits and grants agreed in the very charters of their incorporations and grants of their privileges there should be always referred, as an impartial arbitrator between them and the Treasury and between them and their creditors, the regulation and control of their affairs. That is our attitude. It does not do, therefore, in my opinion, for the Senator to say that the creditor is undertaking to deal unjustly and arbitrarily with the debtor. The Congress of the United States does not stand in any such attitude in my opinion, and I think I may safely say in the opinion of my friend if he will think of it a minute.

But now let us go another step. The Senator says that this does not fall within the power of visitation which he seems to have remembered now does exist to some extent somewhere, and I am not surprised that he concedes that much because of the decisions of the highest tribunal of his own State, none more honorable, none more respected, none more learned, none more conservative. It was long since decided there by a unanimous court upon principles of solid jurisprudence that it was within the competence of the legislative power of that State to declare that an incorporated company which by its charter was required to pay a certain portion of its net earnings or net profits—I forget which was the phrase, but it is of no consequence now—to certain public hospitals in that State and to declare afterwards that the meaning of the term "net earnings" or "net profits" should be so and so, different from what its meaning was in the original charter, and that thus defined a certain balance and proportion of net earnings should be paid to those hospitals. The companies resisted (just as the companies here through their friends resist) most manfully and stoutly the constitutional right of the Legislature of that State having no power to impair the obligation of contracts to do anything of the kind; but the venerable Chief-Justice Shaw and the honored Mr. Justice Dewey and all the others, by a unanimous decision that has stood from that day to this without question and certainly without reproach, said that was an entirely untenable position because the general laws of that State had already provided that every act of incorporation hereafter granted should be subject to legislative control to alter, amend, or repeal, reserving to the Legislature, in spite of their having made a contract by such charter, this power of complete visitation and control. The court held, therefore, that there was nothing in the objection made by the companies that the Legislature had undertaken to put a new definition upon the term "net earnings" or "net profits" to make it to include a larger sum of the earnings of the corporation than had by the original charters been the true construction. If that is the law, as I have no doubt it is and as the Senator has no doubt it is, how can he say that we are transcending the just limits of constitutional authority or the just limits of the proper exercise of this power of legislative visitation to which I have called the attention of the Senator, when we say in almost the very same words that the net earnings of these companies shall be defined and understood to be what every report of every company to its stockholders has always defined them to be; and that is the result after the payment of the operating expenses of the company and not including the payment of its debt or the interest upon its funded debt. I should be glad to know how the Senator distinguishes. No distinction can be made in my opinion.

Mr. DAWES. Of course I yield my opinion to that of the Senator from Vermont.

Mr. EDMUNDS. I only state the opinion of his own supreme court.

Mr. DAWES. The Senator said no distinction could be made, in his opinion. I say I yield my opinion to his. I only say this, that when he can find a case in Massachusetts where the State of Massachusetts holding the obligation of any corporation or any individual payable *in præsenti* by certain terms and *in futuro* as to the remainder, the supreme court of Massachusetts has decided that it is competent for the Legislature of that State to make the *in præsenti* part of it just as large or just as small as they please, or change it when they please—when he shows me that the venerable Chief-Justice Shaw and Mr.

Justice Dewey or any other justice has said that was in the power of Massachusetts, then I will admit he has a precedent; not till then.

Mr. EDMUNDS. That is exactly in substance what those venerable justices and that venerable court decided.

Mr. DAWES. It is not, I beg leave to say. The Senator will allow me to interrupt him. It is not that. There is all the difference in the world between this case and the one he cites. Here is the creditor assuming, because nobody can call it to account for so assuming, to interpret the contract that he has made with his debtor, and make what he has to pay to-day just as much as he pleases and making the balance to be paid twenty years hence just as small as the creditor pleases.

Mr. EDMUNDS. Yes, Mr. President, we will even take that case. What is a creditor? Is it not a person or a being, a corporation or a State, or whatever it may be, that according to the existing arrangement is entitled to have a certain sum of money paid to it? I take it that is what a creditor is. Now the State of Massachusetts in the very instance to which I have referred, under the charter of incorporation of an insurance company I believe it was—but no matter what the company was—was entitled to have paid to it for certain purposes named, its hospital purposes, a certain percentage of the net earnings of the company. So it was a creditor of that company in the general sense of that term. It was a being entitled to receive from the company a certain sum of money a year. Now that same creditor in the sense in which the Senator speaks of it, the Legislature (which I say is not the creditor at all), the Legislature of the State of Massachusetts undertook to say "we will change the definition of net earnings upon which you are to compute the sum that you are to pay into our treasury or to our hospital, and so arrange it that by its meaning you are obliged to pay more than you were before."

That the company resisted, and said it violated justice, and violated the contract that had been made. The supreme court of that State said that that was a perfectly lawful and proper thing to do. The substance and effect of it was that by an act of legislative will in changing the definition of the terms used in the charter the company was obliged to pay money to-day that it was not obliged to pay yesterday. If that is not a parallel case clear up to the handle, as the saying is, I should like to know what is; and as my friend from Ohio suggests, it is still more. If the Legislature requires them to pay more than they would ever be bound to pay, as was the case in Massachusetts, because there was no ultimate debt to be paid, but it was a yearly stipend that was to be paid into this hospital fund, then according to the Senator it would be all right. True, that is not this case; but it goes a great deal further.

In this case this bill does not provide for making anything due to-day that is not due till to-morrow at all. It does not take a dollar of money from these companies of any kind, not a penny. It only says that they shall keep the money in a safe place until their debt is due, and then it shall be kept for the benefit of the creditors and applied accordingly. There is therefore no taking by this bill of money that is due next year and making it due to-day. It only says that the income of these companies derived from tolls and franchises, that Congress alone has empowered them to take, shall not be put where nobody can get it that is entitled to it in the fulfillment of their obligations, but it shall be preserved in order to meet those obligations.

Is that saying that a debt which is due next year is due to-day? Far from it. Is that saying that a debt that is not due at all shall be made a lien upon anything. Far from it. It is only saying that the people who are engaged in these public operations shall keep themselves in an attitude where, when the time comes that they are called upon to apply their assets to the payment of their debts, there shall be some assets to apply; and that the Senator says is taking the property of A, is an invasion of private rights, and undertaking to turn ourselves into a judicial tribunal to dispose of the assets of these companies. Nothing of the kind, Mr. President; that all rests in the inventive genius of the friends of these corporations who have instilled into the minds of Senators somewhere or somehow the notion that we are going to disturb the value of some of these subsequent securities where they are held: but instead of disturbing the value of subsequent securities we are conserving them by every step we take in this direction. Every million dollars that is saved and is not put beyond the reach of creditors by being divided among the stockholders is a million of dollars saved to the very lowest security there is that these railroad companies owe. No matter how far off the bond is, be it third or fourth mortgage, or be it merely a general creditor who has no special security at all, every dollar that is preserved and not divided up among the stockholders is a dollar for him.

Whether you apply it to the first mortgage or the second mortgage or any mortgage, just to that extent it increases the assets of the company to be distributed in due order, as this bill says, according to law and under a judicial administration, if necessary, to everybody that has a right. Is not that right? Is not that equitable? It appears to me that it is; and there is the difference between my honorable friend and myself.

Every court, and latterly and most the Supreme Court of the United States has now settled as far as judicial decision can settle the power of State Legislatures in respect of these public corporations; and as to every corporation, be it private or public in its nature, that has to deal with public affairs, the general welfare of the public as carriers or millers or warehousemen or whatever, there rests in the Legislature the power of conserving its management to the protection of public interests and to the protection of its creditors. That is all. So I repeat, Mr. President, that we do not propose to make a debt due next year due to-day; we do not propose to take a part of the money of A and give it to B; but we only say to these corporations under this plenary power reserved in these charters and grants and under the visiting power that I have described that is universally laid down in all the books, that they shall so regulate the future administration of their affairs that they shall not pocket the money that they have earned from tolls and franchise to the injury of their creditors. That is the whole case.

Mr. MATTHEWS. Will the Senator be good enough to inform me what case it is in the Massachusetts reports that he refers to? The case of the Hospital Life Insurance Company?

Mr. EDMUNDS. It is in 4 Gray; I do not remember the name of the case.

Mr. MATTHEWS. Now, I should like to inquire of the Senator what I rose to ask before, whether I understand him to mean that he justifies the bill of the Judiciary Committee upon an alleged power in Congress as the legislative authority to visit the corporation, and he cites the case in Gray and the cases in 4 Otto as instances of that power of visitation.

Mr. EDMUNDS. No, sir, I do not cite the case in Gray as an instance of that power of visitation, because by a previous act of the Legislature, a general act, it was provided that all corporations thereafter incorporated should have their charter subject to alteration, amendment, or repeal, and the case in 4 Gray was put without going into the question of visitation at all, because perhaps that was not a public corporation that dealt with the public except as private persons chose to deal with them in the way of insurance, which perhaps would not fall within the clause. The case there was put on the ground of exactly the words contained in the acts of Congress of 1862 and 1864, that the companies who had taken those charters and privileges had themselves contracted as a part of the contract that the Legislature should be the tribunal to decide as to their future management and operation, and therefore that it was competent for the Legislature in its discretion to decide what "net earnings" meant and what should be done with a certain percentage of them. And that would be entirely enough for this case, to say nothing of the power of visitation, which is the real power upon which rest the decisions in many of these later cases as it respects public corporations and as it respects private warehousemen, private individuals. But I do not put it on the ground of visitation alone; I think it may rest there with perfect safety. It is enough for my honorable friends from Ohio and from Massachusetts to say that instead of violating a contract or impairing it, in this instance we are doing precisely what the contract, if you call it that, provided we should do, and that is that we should alter, amend, or repeal these provisions according as the solemn and responsible judgment of Congress standing independent (just as much so as a judicial tribunal) between public interests and the private interests of creditors and these great corporations.

Mr. SARGENT. Mr. President, I think there might be more confidence felt in the emphatic declarations by the members of the Judiciary Committee as to what the law is if, in dealing with this subject heretofore, they had not come, sadly for themselves, so strongly into collision with the Supreme Court of the United States, and I think there might be more confidence in the fairness of their intentions if they were disposed, after having, as they said, submitted the case to the Supreme Court, to live up to the decision of the Supreme Court and to the rights of parties as ascertained by it.

Mr. THURMAN. What decision does the Senator refer to?

Mr. SARGENT. I intend to speak but a short time, and I will show the Senator fully before I get through.

Mr. THURMAN. I should like to know what the collision between the Judiciary Committee and the Supreme Court is.

Mr. SARGENT. That is exactly what I am going to show in my own way, and if I am not permitted to do that I will yield the floor to the Senator. In 1871 the question arose whether the interest on the bonds was presently due, and whether the whole transportation money should be kept in the Treasury of the United States in order to be applied upon that interest, instead of one-half of it being paid to these companies. At that time a Senator from Nevada [Mr. STEWART] offered the following amendment to an appropriation bill then pending:

In accordance with the fifth section of the act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862," the Secretary of the Treasury is hereby directed to pay over, in money, to the Pacific Railroad Companies mentioned in said act and performing

services for the United States, one-half of the compensation for such services heretofore or hereafter rendered.

To that proposition the Senator from Ohio [Mr. THURMAN] offered an amendment which I will read, and he prefaced it with some remarks. Considerable debate having intervened, among others the present Secretary of the Treasury having spoken and insisted that there ought to be some judicial determination of the question whether this other half transportation should be retained in the Treasury or not, and covering that idea, the Senator from Ohio [Mr. THURMAN] offered his amendment, saying:

My colleague made a suggestion that there ought to be a judicial determination of this question. I am willing, for my own part, that Congress shall decide it, and decide it definitely; or I am willing that there may be a judicial determination, if that will be more satisfactory. Legal questions are much better argued in court than they are in legislative assemblies.

That was the opinion of the Senator in 1871.

I have, therefore, sitting here, drawn a rather crude substitute for the proposition of my colleague, which I will read, and perhaps he may be willing to adopt it instead of the amendment which he has offered. It is to insert after the amendment of the Senator from Nevada these words:

*Provided*, That for the purpose of procuring a judicial determination of the question whether the United States have a right to be repaid in full each installment of interest paid by them immediately upon the payment thereof, it shall be the duty of the Attorney-General to forthwith bring a suit against some one of said companies to recover an installment of interest paid by the United States, which suit shall be brought in the Court of Claims, and said court shall have jurisdiction thereof; and said suit shall have precedence on the calendar in said court over all other suits or cases; and either party to such suit may appeal from the decision of said court to the Supreme Court.

Upon this amendment so pending the Senator from Vermont who last addressed the Chair [Mr. EDMUNDS] spoke as follows:

I confess that I like the amendment of the Senator from Ohio who sits farthest from me [Mr. THURMAN] rather better than any of these; and for one reason especially; that, as a matter of curiosity, I should be glad to find out what principles of construction are to be adopted by our courts in construing statutes, and how far the debates (which are undertaken to be foisted in here to determine what the statutes mean) have a place in modern jurisprudence.

The power of the Judiciary Committee, the power of Congress, has grown wonderfully since that time. To discuss these questions in Congress then, to attempt to pass upon them, was foisting them in. This bill, however, goes upon the theory that whatever the Supreme Court may have decided at that time, it is proper now to have this legislative jurisprudence, according to the newly invented term of the Senator from Vermont, and I suppose he does not now consider that that is being foisted in here:

I should be very glad indeed to have the Supreme Court of the United States determine what the law is on this question. If it determines it in favor of the companies, there is an end of the question.

The Supreme Court did decide it in favor of the companies, and that is the "end of the question." The Supreme Court decided that the companies had a right to have one-half the transportation money paid over to them, and that was the "end of the question," was it? They decided that the interest was not presently due. You mean to treat it as if it were presently due; indirectly you attempt to do what you are not allowed by the court to do directly. You were not allowed directly to lock it up in the Treasury and say it should not be paid over to these parties, and therefore you pass it from your right hand into your left; therefore you invent what you call a sinking fund, and claim a power over these corporations certainly not named in the original act, which enables you now to come in and

take not only this but an amount equal to 25 per cent. of the net earnings of the companies. I ask where is the "end of the question?" The bill you here introduce and ask the Senate to adopt gives us a long vista of congressional action in the future, and the Senator himself declared with great heat last night, in reply to the Senator from Maine, [Mr. BLAINE,] that even if the companies lived up to this bill in all its terms in conscientiousness and exactness, it should not stay further legislation against them. It is complained that they come to Washington by their agents. But if they stay away from the city of Washington and never offend the Senator from Vermont by getting wearying constituents of his to go to his house and committee-room to plead that the security of bonds be not disturbed, that shall do them no good in restraining further aggression. It seems to be troublesome to be approached even in a respectful way, and we are not to be moved, even like the unjust judge of Scripture, by much asking. Though none of these importunities trouble the leisure of Senators hereafter, and the railroad companies stay away and keep away their friends, and do all that we demand of them, pay the 5 per cent. and the whole transportation, and hundreds of thousands of dollars besides, as we now with full light on the subject demand, nevertheless you insist that your action shall have no finality, but your demands shall be increased at your will until every right given to them by previous statutes is taken away if you so please. Oh, yes, that was to be the "end of the question!" It rather looks like the beginning. It would be better to make an end of it by confiscating the roads and punishing the men who dared to build them under the inducement held out by legislative contracts, not worth for their protection the paper they were printed on. A statutory contract, it seems, is of less sanctity than "legislative jurisprudence." The latter is used to destroy the former. It is a kind of Flora McFlimsey affair, which "is binding on you and not binding on me."

The Senator from Vermont goes on:

If it determines it in favor of the United States, as we cannot possibly suppose it will after the report of our learned brethren on the Judiciary Committee—

It seems to me that was rather like a sneer at "our learned brethren on the Judiciary Committee"—

then of course there will be an end of the question, and all parties will be satisfied.

That is, if the Supreme Court of the United States should decide that the other half of the transportation could be retained by the Government and that the interest was presently due and was paid, then the Government would be satisfied; and yet by this very bill there is a proposition to go even beyond that, when the Supreme Court has said exactly the other thing, and to pile up a sinking fund, not merely taking care of the interest, which is not due, but of the principal, and not merely the principal of the amount due to the Government but of the other debts that are owed by the companies and are secured by first-mortgage liens.

With what would all parties be satisfied? With the "end of the question" which gave to the Government its interest as it was paid. There was no talk here of repudiating contracts or amending or repealing them. It was a mere construction that was aimed at, and whichever way the Supreme Court might decide the question was ended.

But next to the amendment of my friend from Ohio farthest from me, [Mr. THURMAN,] or the substance of it, I think that of the Senator from Ohio near me [Mr. Sherman] is the one to which no man who is honest and just—and of course that includes every Senator—would object.

Now, to show the spirit of that debate and to show how far certain Senators went in declaring that the law as subsequently given by the Supreme Court could not be law, and how far Senators who sympathize with this present movement were then disposed to go in denouncing the action of the railroad companies in claiming the rights which they subsequently asserted in the Court of Claims, and which were vindicated by the United States Supreme Court, I want to read a remark made by the Senator from Delaware, [Mr. BAYARD.] I am aware that he is not a member of the Judiciary Committee, but still he is a lawyer, and I have no doubt will declare that this was his legal opinion at that time. I do him no injustice in recalling his remarks, although founded on an error in law. I observe he is absent. I refer to the Congressional Globe of 1872–'73, No. 2, when the proposition came up again and an amendment of the same character was offered by the Senator from Vermont. The Senator from Delaware said:

> The amendment offered by the Senator from Vermont, as it has been perfected and as last read by him, meets my entire approval, and I think it a most just and reasonable proposition that the Congress of the United States should now interpose and through its courts endeavor to have a proper solution of this question to save further outlays of public money, especially in the face of the inordinate and monstrous assumptions which have been made by the friends of these railway corporations for a postponement of the payment of their obligation to pay the interest upon the bonds issued by the United States.

That very monstrous and inordinate proposition—the Senator is now in his seat, and I am glad of it—was the very one that was submitted to the Supreme Court of the United States, and it decided that, under the contract made by Congress with these companies, the proposition was not monstrous and was not inordinate; that these had the right which they asserted; and yet it was the whole theory of the legislation favored by this Senator and the Senator from Vermont at that time, and the amendment of the latter meant just that, that the companies did not have any such rights. Therefore I say, as I said before, that if the members of the Judiciary Committee had been more fortunate in the conflicts which they have had with the Supreme Court of the United States in their interpretation of these contracts heretofore, there might be more confidence in the discretion with which they now decide upon these things. And, furthermore, if they had, after submitting this matter to the Supreme Court of the United States, allowed it to be an end of the thing, as the Senator from Vermont then declared, and as the Senator from Ohio, Mr. Sherman, from whose remarks I have not read, declared, and other Senators said, then I might believe that there is a desire for fair play in their propositions at this time.

Mr. EDMUNDS. The Senator from California certainly does not mean to say that the Judiciary Committee has got into a difference of opinion with the Supreme Court on the law as it was, because the Judiciary Committee reported that the law was just as the Supreme Court have since said that it was.

Mr. SARGENT. I referred to members of the Judiciary Committee, and not to the Judiciary Committee itself.

Mr. EDMUNDS. Ah!

Mr. SARGENT. I referred to the Senator from Vermont, [Mr. EDMUNDS,] I referred to the Senator from Ohio, [Mr. THURMAN,] I referred to the Senator from Delaware, [Mr. BAYARD,] not a member of the committee. The member of the Judiciary Committee whom I named, Mr. Stewart, and the others have passed away. The Supreme Court vindicated their judgment notwithstanding the sneers of the Senator from Vermont.

Mr. EDMUNDS. But it so happens that the Senator from Ohio agreed with the Supreme Court of the United States, that the law as it stood did not require the companies to pay the interest that the United States paid from year to year as soon as the United States paid it. So I do not see that the Senator from Ohio is put into any very disagreeable position, nor the Judiciary Committee. It happens that one member of the committee, being myself, thought the law was otherwise, as I think it is still, with great deference to the Senator from Ohio and to the Supreme Court; and I suppose that is an opinion that I am entitled here to still have without being guilty of any violation of the Constitution of the United States. Now the Senator says that I stated that if they so decided there was an end of the thing, as he last put it. I did not say that. I said "there will be an end of the question." So there would be. The question was whether the law as it stood authorized the United States to sue these companies for the interest it paid every half year on these bonds. The Supreme Court having decided that it does not, there is an end of the question, because the United States must sue these companies on the law as it stands in the courts of justice and I assume they will decide as they did before although we have often seen that even the Supreme Court of the United States sometimes changes its mind on very important questions, and it is very far from being certain that if my friend from California could be permitted to argue the side of the people before that court on that very question they would not, as they did in the legal-tender cases and in a good many others, conclude that they had made a mistake the first time and decide otherwise.

But all that the Judiciary Committee was called upon to do was to tell the Senate what it thought the law was as it stood; and in order to have that question decided by the courts a provision was made for having it tried. It was tried. The Judiciary Committee was never called upon until now and until the bill of last year to advise the Senate as to what it was wise that Congress should do in respect of controlling the management of these corporations for the protection of public and private interests. The Supreme Court has never yet decided or undertaken to decide that Congress has no such power. On the contrary, they have decided as to States, which certainly cannot have any greater power than Congress over such questions, that they have the fullest capacity to do this very sort of thing.

Mr. SPENCER. I move that the Senate do now adjourn.

Mr. THURMAN. Before that is done——

The PRESIDING OFFICER. Does the Senator from Alabama withdraw the motion?

Mr. SPENCER. Yes, sir.

Mr. THURMAN. I want to know who proposes to speak to-morrow on the pending bill. If any one does, I hope he will take the floor to-night for that purpose.

Mr. MATTHEWS. Then, if it is agreeable to the Senate, I will speak to-morrow at one o'clock.

Mr. THURMAN. My colleague takes the floor for to-morrow.

The PRESIDING OFFICER. The Senator from Ohio on the left [Mr. MATTHEWS] has the floor.

Mr. THURMAN. After what has been said by the Senator from Vermont, I do not feel that it is necessary for me to waste the time of the Senate in noticing the remarks of the Senator from California except to say that instead of fulfilling his promise to show a collision—that was the very word he used—between the Judiciary Com-

mittee and the Supreme Court of the United States, the case that he cites is one of a perfect concurrence between the Judiciary Committee and the Supreme Court. He said that the Judiciary Committee had made out so badly in its former collision with the Supreme Court that it had some feeling on this subject, when the fact shows that the Judiciary Committee and the Supreme Court were exactly of the same opinion. I do not know how long it will be necessary for me to repeat that the only question that was then before Congress or before the committee or before the courts was the question of what was the then status of the law. And, in regard to the amendment I offered, why, Mr. President, I offered that amendment because, although I agreed to the report made by the Judiciary Committee, I did not like, if I could possibly help it, that we should positively legislate on this subject, when it could be submitted to a judicial tribunal to determine what the law then was. Therefore, I suggested that a case be made.

Mr. EATON. Can we not make one now?

Mr. THURMAN. What! make a case to determine what Congress shall do under its power to alter, amend, or repeal! Yes, we can make a case. Pass this bill of the Judiciary Committee, and if these companies see fit to contest it, let them do it; but do not let us decide that we will do nothing but what they demand and thereby make a case impossible. Until we assert the power we believe we possess, how will you have any case? If we are to resolve all doubts against the Government, if we are to resolve all scruples against the exercise of any power whatever, if we are to be astute to find out that we are absolutely helpless, how will you ever get a case? If the bill of the Judiciary Committee is unconstitutional, the courts will so decide it. But they never will decide it unconstitutional unless it becomes a law, because they never can have a case to decide it. But I do not wish to occupy the time of the Senate to-night.

Mr. SPENCER. I renew my motion that the Senate adjourn.

The motion was agreed to; and (at five o'clock and twelve minutes p. m.) the Senate adjourned.

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APRIL 4, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, the pending question being on the amendment submitted by Mr. MATTHEWS.

Mr. MATTHEWS. Mr. President, it is with very great and sincere reluctance that I intrude again upon the attention of the Senate in this debate. I should not have done so but for a turn which it took, which it seemed to me made it necessary that I should have some words to say in reply.

The dignity of the debate (which is usually synonymous with its dullness) has been relieved to some degree by the entrance into it of what seemed to me to be some personal feeling and at least some extraneous matter. I was, for instance, somewhat taken by surprise when I ascertained that my distinguished colleague who has charge of the bill on behalf of the Judiciary Committee, [Mr. THURMAN,] whose organ for that purpose he is, seemed disposed to resent with some zeal and some indignation what appeared to me to be nothing more than proper opposition growing out of differences of opinion; and he seemed to think that, if what had been said by Senators as grounds and reasons for their opposition was true, it amounted to such a condemnation of the members of the Judiciary Committee as to indicate that they were no longer fit for their functions and that they would have nothing to do after such a sentence but to admit the judgment and resign.

I am unable to agree, Mr. President, with my distinguished colleague in his opinion construing the constitutional powers of Congress in their proposed application to this subject. Am I to be silenced on this floor because to speak makes me to differ with that committee? What becomes of the propriety of his complaint when in the same debate he accuses the other committee of this body with having brought in a bill which subsidizes these companies beyond the original grant? Certainly, Mr. President, I cannot yield to the argument which he made on the floor yesterday that it was sufficient ground to support his bill because it was unconstitutional; otherwise we could never have that question judicially settled! I think that it is a sufficient reason to vote against any proposed legislation that in my judgment it comes in conflict with the limitations of the fundamental law, and on such a question no Senator has a right to surrender his own personal convictions. I have unfeigned respect, which I take the utmost pleasure in publicly avowing, for the Judiciary Committee of this body and for each individual member of it, including my honored and distinguished colleague, whose value and worth as man, lawyer, judge, and citizen I have known so well and so long, but I cannot afford to yield one jot or one tittle of my own deliberate and considered opinions on a question of constitutional right out of mere deference to any person.

There was another matter referred to by several Senators, and I believe particularly by the Senator from Vermont who is on that committee, [Mr. EDMUNDS,] that I was very much pained to hear broached as the ground of argument in such a discussion; and that was that the corporations in reference to whose rights and interests this legislation was proposed were powerful bodies seeking to influence legislation in their favor by improper approaches and solicitations, the tread of whose messengers and agents it was said was to be heard on the very floor of the Senate, who were packing the lobbies and filling the galleries. Whatever grain of truth may be in such a statement, certainly the language is the language of hyperbole; and unless Senators are prepared to make distinct and specific charges involving the integrity of the body itself or of its members, the only possible effect of such insinuations, however guarded and professedly excluding accusations of impropriety of conduct on the part of public men, is, nevertheless, that they go forth to the world calculated, if not intended, to throw the cloud of suspicion upon those who for reasons satisfactory to themselves feel impelled to a course different from that approved by the committee. And my friend, the Senator to whom I allude, referred only yesterday afternoon to those who, like myself, found insuperable objections to supporting the bill of the Judiciary Com-

mittee as the friends of the railroad companies, as if the railroad companies were a public enemy and as if they, and they alone, were the defenders and the champions of the public interest and the public rights.

I repeat again my sincere respect not only for the wisdom and the learning, but for the disinterestedness and patriotism of the members of the Judiciary Committee. They are the select men out of this select body, "the expectancy and rose of the fair state." And yet, Mr. President, I cannot yield to them one particle in the advocacy of opinions and doctrines that however in this case in their application may seem to favor a corporate right, in my judgment nevertheless lie at the foundation of every right that is dear to a freeman.

But, Mr. President, it was reserved to my distinguished friend from Michigan [Mr. CHRISTIANCY] to direct the shafts of wit and argument intended for my exclusive and personal benefit. In form he was not otherwise than complimentary, and yet he represented me as making a great show of apparent law without any law at the bottom.

Mr. CHRISTIANCY. The Senator will excuse me for saying that I did not pay him quite that compliment of saying it was apparent law, but I said no man had succeeded in making a thing appear so much like law with so little law in it.

Mr. MATTHEWS. Of course, Mr. President, as usual and as always my friend is literally correct, and if I had the same means of arriving at a knowledge of the truth which he informed us he possessed himself, I should be without that excuse for my error and shortcoming that I trust under the circumstances he will graciously allow me, because it appears from his own speech what his way of arriving at a knowledge of legal conclusions was, and it turns out to be an instinct; for, while reproaching me with having referred deliberately to all the authorities which were favorable to my view and as deliberately ignoring all those the other way, he spoke of that mental paralysis which had come over me when I stopped at the first volume of Otto and refused to make the Senate aware of that array of authorities contained in the fourth volume which it seems he had not himself at the time when I delivered my speech either read or studied.

Mr. CHRISTIANCY. I had read them.

Mr. MATTHEWS. Well, I find on the thirteenth page of his printed speech that in referring to these cases he said:

> I read these cases when they first came out. But from that time until I had prepared all the foregoing portions of my argument, last Saturday evening, I never examined one of them.

Now the Senator from Michigan proceeds to inform us how he arrives at his conclusions. He says:

> When I undertake to reason upon principle I prefer to carry out the principle first, without mixing up cases and authorities with the line of thought. Then I am in the habit, when I have the time, of looking into authorities to see how others have reasoned upon the same principle: and to see if there is any occasion to modify my own course of reasoning: and to correct myself, if I find I have been wrong. But, in this case, having since looked carefully into those authorities, I find not one word to correct.

The wonder is that the courts have so often guessed the law as coincident with the instincts of the distinguished Senator from Michigan; but the most amazing part of the whole performance is that the authorities which I cited were the very cases quoted by the Judiciary Committee, and that I stated them as proving in the same sense the very conclusions which they reached and stated that the only difference between us was as to the application of the principles which

they establish, for after citing the very extracts referred to by the Judiciary Committee from several cases I said:

These expressions constitute the best judgments attainable in our decisions upon this question, and I have quoted them because they constitute the common ground of our argument, as they are relied upon not only by myself but by the distinguished member of the Judiciary Committee who specially argued this question. The difference between us, then, is not so much what constitutes a true expression of constitutional law on this point as whether it is rightly applied in this case in the bill reported by the Committee on the Judiciary.

And now, Mr. President, I ask the indulgence of the Senate to listen again to the propositions which in point of fact and as matters of law I maintain as against the essential principle of the committee's bill. In the first place these corporations are private corporations. They are not public corporations in the sense in which this bill touches them, and in the sense put upon them in the argument. The fact that they were chartered or empowered by act of Congress impresses no public character upon them that would not have equally existed if they had been chartered by the general assemblies of the States through which they pass. They are not public corporations in any sense other than that in which all railroad companies are public. In respect to their proprietary rights, in respect to their contracts other than the public contract which constitutes the franchises of the corporation as a corporation and as a railroad company, they are as private in their artificial persons as either of us is in our natural person. They have the same rights of property and the same rights of contract and the same rights of defense, and this proposition I establish by the authority of the case in the eighteenth volume of Wallace's Reports, where the direct question was presented to the Supreme Court of the United States, the companies seeking to defend themselves against the State of Nebraska levying a tax upon their property on the ground that they were a public corporation chartered for the purpose of executing an agency on behalf of the Government, and therefore not capable of being taxed by State authority; but the Supreme Court of the United States held that for all the purposes of acquiring and possessing or using property they were private corporations and subject to the law of private persons. Of course they were called into being for a public purpose, for the purposes of the United States, for the purpose of constituting great highways of trade and travel between the Atlantic States and the Pacific border for military purposes, for commercial purposes, for postal purposes. But just as the Government could and might and does continually use private persons and private property in the execution of its public objects, here, rather than construct and operate these lines of road itself, it called into being artificial persons whom it endowed with existence and with certain rights in order to enable those persons to execute those uses.

So that, Mr. President, and it is one of the most significant features in this discussion, when it is proposed to adopt and apply to these artificial persons in that relation which they occupy to the United States Government by virtue only of their private powers and their private interests certain rules, it ought to be remembered that we are laying down the rules that govern every natural person situated in like circumstances and that if we are putting into force hostile rules directed against corporate authority the same rules will determine private rights. We cannot hereafter shield and protect and defend ourselves against the application of identical principles where no corporation has any interest. The doctrines which belong to this case are the doctrines which belong to the case of every man and of

every citizen, and affect equally and everywhere the interests of property and all that property means as well as the interests of corporations. It is a very cheap and easy thing to join in the hue and cry against unpopular things and people, but it is a very dangerous thing. No man knows how soon his curses may come home.

The next point which I wish to call attention to is this, and it was well and forcibly brought out by the Senator from California who spoke yesterday, [Mr. BOOTH,] and that is that the fact that in this case the United States is a creditor and that it is legislating in reference to its own interests as such is utterly immaterial and irrelevant. The fact that the United States has advanced these bonds which at some distant day these corporations are under the obligations of the contract contained in these laws to repay, neither gives to the United States nor takes away from its Government any right of legislation whatever.

The rights of the United States as a creditor, with the single exception of its statutory preference and priority in the distribution of an insolvent estate, are exactly alike and exactly equal to the rights of any other creditor. They are neither greater nor less; they are not other and different; they are the same. And the situation, Mr. President, is precisely as if these railroad companies did not owe to the United States, and were never bound to pay to the United States a single dollar; the situation is exactly what it would be if these companies owed their first mortgage to the bondholders secured by it, and their second mortgage to other bondholders scattered throughout this and other lands, private persons, and had never had a pecuniary transaction with the Government. If the United States Government has the right, by a change in the law, to anticipate the promised payment to itself, it would have the same right to make the same alteration of the law in favor of the first-mortgage bondholders or the second-mortgage bondholders, being private persons, and it would apply not only to these railroad companies but to every corporation created by the United States or subject to its jurisdiction, in respect to whom it had the power of general legislation. Now, I think there can be no reasonable doubt of this. It is the same principle which was announced and applied by the Supreme Court of the United States, in the case of Davis *vs.* Gray, in 16 Wallace, on page 232, in reference to a precisely similar state of things between the State of Texas—the Senators from that State know well the facts and the law of the litigation—between the State of Texas and the railroad corporation created by it; and the Supreme Court in referring to it said:

> When a State becomes a party to a contract, as in the case before us, the same rules of law are applied to her as to private persons under like circumstances. When she or her representatives are properly brought into the forum of litigation, neither she nor they can assert any right or immunity as incident to her political sovereignty.—*Davis vs. Gray*, 16 *Wallace*, 233.

We are therefore in a situation in which we have a right to lay out of view as immaterial and irrelevant the fact that the United States has made an advance of bonds in reference to which there arises the ultimate right of repayment, and we are at liberty in this discussion to treat the case precisely as if some third person indifferent and a stranger was the holder of that lien and mortgage which in point of fact the United States now holds; so that all these exhortations in reference to the duty incumbent on us as members of the National Legislature to look carefully to the interests of the Government as a creditor, while perfectly just and appropriate, should not be allowed

to carry us one inch further in the assertion of power and the exercise of authority than we would do if it was to secure the debt of the Senator from Kentucky or any other private person.

The United States as a creditor, as a co-contractor, has the right to negotiate, has the right to parley, has the right to treat, and if its debt is of present obligation to sue and to recover and to pursue with all the processes of the law; but it cannot while in that attitude and pursuing that interest put on the crown and the scepter of sovereignty and make use of those national rights and those powers of government given for the equal benefit of all the States and all the people for the petty purpose of collecting its own debt. It has a right to its debt when due according to the terms of the obligation; it has no more, and it cannot give itself any more. It is a mistake to suppose that the frame and instrument of government organized under the Constitution of the United States is an original and indefinite reservoir of power on which it can draw at any time for any purpose and to any extent under the plea of public necessities and public interest, and we ought to thank God that it is so, and not otherwise; for in spite of the exhortations of my learned friend the Senator from Michigan, I shall never live long enough and grow old enough to forget to be jealous of power wherever it is placed.

Why, he asks, not bestow generous confidence upon the public authorities and believe that they will not abuse unlimited power? Mr. President, do the records of history furnish an example of unlimited power that was not abused? What is the meaning of our Bill of Rights? What is the meaning of our several constitutional amendments? What is the meaning of our written ordinances of Government? It sounds like reciting axioms to repeat the plain and simple words that protect life, liberty, and property against the arbitrary exercise of the powers of Government. But, Mr. President, who can count the cost of those truths? How much treasure, how much blood have been shed in order to establish the simple and axiomatic propositions that life, liberty, and property shall not be taken without due process of law, that private property shall not be taken for public uses without just compensation, and that it shall not be taken for private purposes at all under any circumstances and at any price? Why, Mr. President, the whole of civilized life is wrapped up in these simple axioms of political conduct, and it is no mere sentiment that extols Magna Charta as the most valuable possession of the English-speaking people. Let us take care that in assuming the protection of pecuniary public interests we are not overriding that higher, that greater, that more valuable public interest worth more than all the tons of gold and silver that come from the rich States of the Pacific.

Mr. President, it has been assumed by those who have argued in favor of the bill of the Judiciary Committee, without proof, that the reservation of power in the statutes which constitute the charters of these companies is unconditional and unlimited; that it is absolute, and dependent on the existence of no other fact than the mere will and pleasure of Congress. It is true that in the act of 1864 the language is simple and general and unconditional, a reservation without any qualifications in that section, of the right to alter, amend, or repeal what? That act, the act of 1864. But it is said by the Senators on the other side of the question that by a well-known canon of interpretation the two acts must be construed together because they are *in pari materia*. I admit it. What does that mean? It means that they must be construed as if, instead of being two separate stat-

utes, they were only one actual statute; in other words, as if they had been passed at the same instant of time.

Now, then, they say that construing the two statutes in that way, as if they were but one, you must import the unconditional reservation of the right to repeal into the language and context of the act of 1862, so as to strike out of that act all the qualifications and conditions that are admitted to be in it; in other words, you must put the two statutes into one and then, merely for the purposes of construction and interpretation, you must blot out and erase and cut away from the section of the statute of 1862 the words and the language and the ideas and the restrictions which Congress put into it. By what right; by what authority? Here my learned friend from Michigan comes in with another one of those wise saws which I suppose were evolved by his instinctive knowledge of jurisprudence, of legislative jurisprudence; and that is that the section contained in the act of 1864, being the latest expression of the legislative will, must be construed as repealing all prior and inconsistent provisions. Latest! Latest expression of the public will; when, by the supposition, it was passed at the same instant! How can there be former and later when they were both brought forth *eo instanti*?

Mr. CHRISTIANCY. I wish to inquire what that remark applies to?

Mr. MATTHEWS. To what?

Mr. CHRISTIANCY. Does the Senator apply that to the acts of 1862 and 1864 as taking effect at the same time?

Mr. MATTHEWS. If the Senator had been as intent upon hearing me he would not have needed to ask that question. I was replying to the argument made by the Senator that the repealing clause of the act of 1864 is a substitute for the repealing clause of the act of 1862, on the ground that they are to be construed as one act, and then, having gotten them together into one statute, which implies of course its passage as an integer at one moment of time, he substantiates his argument by speaking of the act of 1864 as the latest expression of the legislative will.

Mr. CHRISTIANCY. Then, if the Senator will permit me, if he will turn to my speech, he will find that I took a very different ground from that.

Mr. MATTHEWS. Well, Mr. President, the Senator's speech is quite convenient, and I will on that challenge exhibit the proof of what I say. I read from page 8 of the pamphlet edition of his speech, wherein he says:

> And very clearly, according to well-settled principles of construction, if the power to alter, amend, or repeal, in the act of 1862, was a restricted power, then, the unrestricted power in the later act, covering the entire ground of the same subject-matter in the limited provision of the act of 1862, and even more, must repeal that limited provision; because being the later provision on the same subject it repeals it to the full extent of the difference. It is the last declaration of the legislative will upon that whole subject, and would operate as a repeal to this extent from the time of its adoption, whether declared to be an amendment or not.

Mr. CHRISTIANCY. That is not the point.

Mr. MATTHEWS. I do not propose to read the entire speech. Now, the only ground on which the repealing clause of the act of 1864 can be made to reach back to the act of 1862 at all is upon the ground of the canon of interpretation that requires them to be construed as one act, *in pari materia*, because the language of the clause in the act of 1864 expressly confines its operation to that particular statute. Now, then, Mr. President, I say conversely that construing the statutes in the way required, and welding them together as if

they had sprung into existence at the same moment, the conditions and qualifications which belong to the right of repeal, as reserved in the act of 1862, immediately lay hold of and embrace and conform to themselves the otherwise unlimited and unrestricted section of the act of 1864.

Mr. CHRISTIANCY. Let me point to the Senator a part of the speech to which he has not alluded.

Mr. MATTHEWS. I am a little fatigued, and shall be more so, and I humbly submit to my learned friend from Michigan that as far as I am concerned he shall have abundant opportunity to reply. There is nothing that I more desire than that this debate shall be prolonged sufficiently to enable every Senator thoroughly to understand the principles on which he is expected to act.

Now, Mr. President, what are the conditions and qualifications contained in the act of 1862? They are contained in the eighteenth section of that act. They are as follows:

That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs and the furnishing, running, and managing of said road, shall exceed 10 per cent. upon its cost, (exclusive of the 5 per cent. to be paid to the United States,) Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law. And the better to accomplish the object of this act—namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes—Congress may at any time—having due regard for the rights of said companies named herein—add to, alter, amend, or repeal this act.

The first qualification upon that right of amendment and repeal is that you shall not lay your hand upon the net earnings of this road until you have allowed the stockholders to have received from its operation, in addition to the 5 per cent. to be paid to the United States, 10 per cent. upon its cost, for the reservation is in Congress to change the rates of fare and freight established by the companies only when, and in the event of, the net earnings exceeding that amount; and in violation of that, in utter disregard of that solemn legislative pledge, the Judiciary Committee of this body call upon its members to vote away the entire control of these companies over their earnings to the extent of 25 per cent. of their net amount.

More than that: the power reserved to amend is described in this section as reserved for certain express and specific purposes and no others. It is to promote the public interest and welfare by certain means, and those means are first the construction of the railroad and telegraph line, second keeping the same in working order, and third securing to the Government at all times, but particularly in time of war, the use and benefit of the line for postal, military, and other purposes.

For those purposes you may add to, alter, amend, or repeal the act, and for no other; and these companies and all who either put their money originally into them or who have since become interested by the negotiation of their securities had a right to rely that whether Congress had the power abstractly and as a sovereign or not, here was a solemn legislative pledge that it should be used only in these contingencies and to accomplish these objects. And now on the invitation of our Committee on the Judiciary we are invited to the exertion of power which a Congress with equal power has agreed should not be exerted, and that to accomplish no purpose of the original act. It is not even professed or pretended to be for any one of the enumerated purposes contained in this section. No, Mr. Presi-

dent, the purpose is altogether different. Although it is not avowed, it is so plain that it cannot be disguised. The purpose of this enactment, if it becomes such, is that it may not so much alter, amend, or repeal these statutes as that it may reverse a judgment and decision of the Supreme Court of the United States. That court has decided that these companies do not at this present time owe the Government on account of interest a single cent, that nothing will become due until the maturity of the bonds themselves. If that decision had been otherwise, this proposed legislation would not have been thought of, there would have been no plausible pretext for it, and it is because there is nothing due, because there is nothing accruing, because the Supreme Court of the United States has so decided, that we are called upon, not by direct act, but by indirection, to put the companies into that position as if the Supreme Court had decided the other way.

Mr. President, every single authority that has been cited or that can be cited admits that even in reference to a reservation of a right of repeal in absolute and unconditional terms, nevertheless there is a limit. What that limit is is a more difficult question. That there is a limit, the authorities all say. That there is a limit must be, if our Government is a free Government, and if we are a free people. Otherwise, we are living under the dominion of absolutism, of that unlimited authority and power and government which, in old times, was supposed to be of divine origin, when kings ruled by right divine. That doctrine, which found so illustrious an exponent in Hobbes, and which is not altogether exploded even in modern times, and who describes it where he says, in endeavoring to demonstrate the origin of government in that consent and concord which constitutes the community as if it had but one will:

> As if every man should say to every man, *I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition: that thou give up thy right to him, and authorize all his actions in like manner.* This done, the multitude so united in one person is called a COMMONWEALTH, in Latin CIVITAS. This is the generation of that great LEVIATHAN, or rather, to speak more reverently, of that MORTAL GOD to which we owe, under the IMMORTAL GOD, our peace and defense.—*Hobbes's English Works*, volume 3, page 158.

That is the doctrine of absolutism. Do Senators understand what that means? Do they suppose that that as an exploded theory of human duty and human right in the constitution of government has been relegated to the limbs of lost and unremembered things? It is living to-day. Its name is COMMUNISM. It means that the state absorbs unto itself all the power of all the individuals that compose it, that there are no such things as separate or separable individual rights, that all rights are common rights, that the Government must own and regulate and operate all the railroads and all the telegraph lines, that it ought to own as common stock all the lands, no citizen having a right to acquire a fee, an inheritable estate, but only a tenancy, that the state shall control and own all the workshops and employ all the labor and fix all the wages and all the incomes of all its people.

It may be thought, certainly a few years ago it would have been thought, a very vain alarm to sound, that any such wolf as that was at our doors; but nevertheless, the offspring of poverty and hard times, of discontent and of ignorance, it is here, and is hunting everywhere for legislative precedents on which to build and found its theories and justify its vagaries, and when the time comes, as the time soon may, when the organs and representatives and exponents of such ideas find their authorized places in these seats or in the Chamber at

the other end of this building, they will look a long time before they will find a case more completely in point to establish that theory of constitutional power in the Federal Government which they most desire and need, than in the very bill which we are considering, the bill which, in the minds of many of its advocates, does not need to rest upon reservations of power contained in express words in the statutes themselves, but rests upon an inherent right, a supreme power that cannot be subtracted from, no matter how much it is spent. But as lawyers, in undertaking to define, at least negatively, what limits there are upon such a power, there is as yet, so far as I have been able to discover, in point of doctrine theoretically no actual difference, for it is admitted by all who have spoken on the other side that, no matter how unconditional and absolute is the right in question, it cannot extend so far as to divest a vested right, and the question really is, what are vested rights, and how are they affected by this proposed legislation?

My learned friend the Senator from Michigan undertook to do what none of his colleagues attempted, and that is to draw the line; and in order that I may not misrepresent him I will refer to the language of his speech; I read from the eleventh page of the pamphlet edition:

> I do not contend, I never have contended, that the power extended so far as to authorize Congress to divest property or rights which, though originally depending upon, or growing out of, that contract, have become so far vested as to be able to stand upon another foundation, without the direct present or future support of that contract. The lands which have been patented to the company, for instance, which might rest upon the patent, and so of any other rights not dependent for immediate support upon the contract, whether those rights are still vested in the companies or in third persons derived from them. Property or rights thus vested cannot, I admit, be divested by the legislative power.

Now, Mr. President, let us apply that rule, let us apply line and plummet, and see whether the learned Senator from Michigan has built square work. A right which, though originally springing from the law, has acquired another foundation than the law, is a vested right, but one which must continue to depend upon the continuance and subsistence of the law itself is not. That is the standard and rule.

Mr. CHRISTIANCY. The Senator will allow me. I put it on the ground not of the law as a law but as a contract.

Mr. MATTHEWS. Call it what you will, it is the thing which you are talking about repealing, and it is the contract though in the form of law. Now I premise, any man acquiring a right, for instance, under the contract between the United States and the railroad companies under the act of 1864 has no other, better, or higher rights than the corporations, for whoever takes takes under the law, by virtue of the law, through the medium of the law; he has notice of its provisions; he is not a stranger. There is a privity of title, of estate, of contract, so that his right has not become vested on this account; the repeal of the contract contained in the law takes it away just as thoroughly and effectually as it takes away unvested rights of the corporation.

Now one step further. The act of 1862 reserved in favor of the United States as security for the repayment of its advances of bonds a first-mortgage lien upon the property of the companies. The act of 1864 authorized the corporation to make an issue of first-mortgage bonds, and subordinated the lien of the United States, which by the prior act was a first lien, to the now first lien authorized under the act of 1864. That mortgage has been executed and those bonds are outstand-

ing. Are the rights of the holders of those bonds vested, or are they not? Why, my learned friend from Michigan, I anticipate, will say, "Certainly they are." Certainly they are, as holders of a mortgage and bond against the corporation; but the priority of the lien of that mortgage is continuously, daily, hourly dependent on the continuing subsistence of the act of 1864. Take away the act; your mortgage is there, your bonds are there, but where is the priority of your right? Where is your first-mortgage lien? It is gone; gone by the repeal; gone—if the Senator from Michigan is right in his definition of what constitutes a vested right—because the distinction is between the claim of the bondholder against the company and his claim of priority as against the United States. The claim of the bondholder against the United States is dependent perpetually on the continued existence of the statute which constitutes the contract.

Mr. EDMUNDS. Does the Senator mean the first-mortgage bondholder?

Mr. MATTHEWS. Certainly. I am not arguing that they are subject to any such contingency, but I do argue, as I do most firmly believe, that if Congress has the power to compel the companies to do what they will be required to do by the terms of the pending bill, then Congress has equally the right to subvert the present priority of lien vested in the first-mortgage bondholders.

Mr. President, the contrast is so striking that it continually reverts to the fact that lately this Chamber resounded with appeals to the national honor and to the national faith to stand by contracts, where the contract as it was interpreted was against the express letter of the only laws under which it was claimed to have been made and based upon, an implication merely resting upon the expectation of the parties claiming the benefit of it. Those who were then arguing in favor of the contract as written, as expressed in the statute, were handled as breakers of the national faith, as violators of the national public pledges, as repudiators of the national credit. Some of the same Senators are now clamoring for the exercise of power in another direction, directed against other parties, upon the ground that it is derogatory to the dignity and honor of the nation to admit that it *can* be bound by its own pledges.

What are vested rights? An estate in land is a vested right; a title which gives right to a future possession, a contingent estate as distinguished from a mere expectancy, is a vested right; it cannot be taken. An estate in personal property, a right to its possession, present or future, cannot be taken. Are there none others? Certainly there are. A right of action is a vested right; a promissory note, though not yet due, an obligation to pay money held by another, is a vested right, and that right of action cannot be taken away. So a right of defense is a vested right. If one holds against another a right of action which has ceased by law to be such, as, for instance, where it has been barred by the operation of the statute of limitations, the right to plead that statute in bar of that action cannot be taken away. The right of action cannot be taken away by the passage of a statute of limitations which gives an unreasonably short time in which to bring the suit. A right of defense once perfected under an existing law is not affected by the repeal of the law.

Can the United States sue the railroad companies for the recovery of money to be put into a sinking fund? Can it sue these companies for the recovery of money due on account of the interest on these bonds? That has been tried and decided. It cannot sue to recover money to go into a sinking fund, because there is no such existing

right. If it should bring any such suit as that, the company has a perfect defense to such an action for the recovery of any money on the ground that by the contract with the Government it owes nothing. Unless, indeed, it can be claimed that the right to a sinking fund is an implied incident to every debt payable *in futuro*. To state such a claim is to refute it.

You propose to take away that defense, you propose to alter that contract, you propose to change the relation between these parties established originally by their joint consent, so that now, without the consent of the defendant, the United States may lawfully bring an action for the recovery of money not due and never promised, and failing that, not merely to have judgment rendered for the specific sum with execution awarded, but to forfeit every other right, every right which by the existing law it has to all its possessions. That is what the distinguished Senator from Vermont calls *legislative jurisprudence*. Without intending offense, it is what I call legislative injustice, legislative wrong.

If what is proposed can be done, why cannot a law be passed declaring that, whereas the United States are largely in advance on account of the interest on these bonds, hereafter from this time, by virtue of this amendment and enactment, that amount of money shall become presently due from these companies to the United States? Why not do it in that express and direct way? for the objection is not to the form of the thing; it is to the thing itself. If you cannot do that I defy mortal man to point out a rational distinction, an intelligible, common-sense distinction, between that and that which is proposed.

It has been said by the advocates of the Judiciary Committee's proposition that they do not claim they have the right to make the debt now not due for twenty-odd years presently due. They admit that that would be divesting a vested right, but that although not due they can make the defendant pay it; for where is the difference between contributing annually to a sinking fund compulsorily exacted and required to be paid and piled up in the coffers and treasury of the other party, to be held there and applied by it when the time does come for the maturity of the debt, and to declare in express words that the debt is now due and to be collected? It would take a Damascus blade to draw the line of distinction. As it stands it is a clumsy subterfuge. It is not legislative jurisprudence, it is a legislative stratagem. It is doing one thing by indirection where there is neither the courage nor the manliness to do it outright. What is the difference between declaring an obligation due and payable which is not so and declaring that the obligor shall pay an obligation now which is not due for twenty years? What is a sinking fund but a mode of anticipating payment by paying before maturity? Or, if it be mere security, where is the right to demand security when the agreement was to lend without security?

What are the excuses put forth? On what pretenses founded in any system of jurisprudence is this thing based? My friend the Senator from Vermont said yesterday afternoon that it was sufficient to found it on the right of visitation, and I understood him to express a little sort of impatience, not to designate it by any other name, at the Senator from Massachusetts for not knowing enough of the horn-books of the law to know that that was a plain and perspicuous ground upon which it could be based. Now, I read from a horn-book of the law, the second volume of the commentaries of Chancellor Kent, on the subject of the visitation of corporations, wherein he says:

I proceed next to consider the power and discipline of visitations to which cor-

porations are subject. It is a power applicable *only* to *ecclesiastical* and *eleemosynary* corporations; and it is understood that no other corporations go under the name of eleemosynary but colleges, schools, and hospitals. The visitation of civil corporations is by the Government itself, *through the medium of the courts of justice.*

Again:

This visitorial power arises from the property which the founder assigned to support the charity; and as he is the author of the charity, the laws give him and his heirs a visitorial power; that is, an authority to inspect the actions and regulate the behavior of the members that partake of the charity. *This power is judicial and supreme, but not legislative.*

Visitatorial

Again:

There is a marked and very essential difference between *civil* and *eleemosynary* corporations on this point of visitation. The power of visitors, strictly speaking, *extends only to the latter.*

Again:

The visitorial power, therefore, with us, applies *only* to eleemosynary corporations. Civil corporations, whether public, as the corporations of towns and cities, or private, as bank, insurance, manufacturing, and other companies of the like nature, are not subject to this species of visitation. *They are subject to the general law of the land and amenable to the judicial tribunals for the exercise and the abuse of their powers.* The way in which the courts exercise common-law jurisdiction over all civil corporations, whether public or private, is by writ of mandamus and by information in the nature of *quo warranto.* It is also well understood that the court of chancery has a jurisdiction over charitable corporations for breaches of trust.—2 *Kent's Commentaries*, 363, 364, 367.

Now, three things appear: first, that the power of visitation applies only to *corporations;* secondly, it applies only to *eleemosynary* corporations, and not to *civil* corporations; and thirdly, that the power of visitation is not *legislative* but *judicial.* Yet, the learned Senator from Vermont cited the case in 4 Otto, of Munn *vs.* Elevator, as a case where the Supreme Court of the United States had decided that the power of visitation was rightfully exercised.

Mr. EDMUNDS. If the Senator will be good enough to read that part of my remarks, I should like to hear them, and they have not been changed.

Mr. MATTHEWS. I have not the remarks by me. If the Senator says he did not say so, that is enough.

Mr. EDMUNDS. No; I should like to have the Senator be sure.

Mr. MATTHEWS. The Senator had better be sure.

Mr. EDMUNDS. My observations are never doctored after the reporter takes them down. The Senator will find them, therefore, exactly as he heard them, if he heard them as stated. Now, if he will be good enough to turn to any place where I said the case of Munn (which I suppose is the one he refers to) had been decided by the Supreme Court on the ostensible ground of visitation, then I shall admit that I am wrong and he is right, because they did not decide it on that point.

Mr. MATTHEWS. I appeal to the Senate if the Senator did not speak of the case of Millers and others in the cases, of which there is a whole array in 4 Otto, as cases of visitation; for I was so astounded at the remark that I took special pains to interrogate the Senator as to his meaning. He said the power of visitation, though not the only ground on which the authority could rest, was a sufficient ground, and he cited the cases in 4 Otto as proof of the decisions of the court in the application of that doctrine. The leading case was the case of a private person where the Legislature of the State of Illinois first declared that his vocation was public and then because it was public that they had a right to regulate the rates of his charges to his customers. I do not purpose at this time on this occasion in this way

to comment on the decision or on those which followed it in the same series of that volume of reports. The ground of the decision was not the right of visitation.

Mr. EDMUNDS. What was the ground?

Mr. MATTHEWS. The ground was that an elevator was property which by the act of the party had been dedicated to a public use, which vested in the public, represented by the Government, a certain interest coupled with the right to regulate that public interest according to its notions of the general welfare; and so they held in regard to the railroad corporations, in which it was held as to this very doctrine of the limitation on the right of repeal to be immaterial, for the reason that the court in the Munn case had already held that as to private property the same right of regulation existed, and nobody contended that the property of the corporation was in a better category than that of private persons. I think the only visitation that can appropriately be spoken of in this connection is a visitation of Providence in the concoction and urgency of this bill.

Mr. EDMUNDS. Certainly Providence had not anything to do with the Railroad bill.

Mr. MATTHEWS. It may have. Those on whom the tower of Siloam fell were perhaps not more unjust and wicked than those who escaped.

Mr. EDMUNDS. I do not remember that case.

Mr. MATTHEWS. No, sir; that is not a case in Gray. That brings me to a consideration of this famous case, cited with so much array of conclusiveness from the fourth volume of Gray's reports, the case of the Massachusetts General Hospital against the Mutual Life-Insurance Company of Worcester. If I am not mistaken it was claimed that this case was a direct authority for the proposition that, under the general power of amendment of a provision in the charter of a corporation which defined net earnings in a particular way so as to require the payment of only a certain amount, the Legislature could subsequently pass another act giving another definition to net earnings so as to make the company responsible for another and a larger amount. It has to mean that to mean anything pertinent to this discussion, and it does not mean that. There is not one word in the case approaching it. The facts in the case are simply that, by the previous legislation of the State in the charter of the Massachusetts General Hospital, a life-insurance company was chartered who were required to devote one-third of their net profits to the support of the hospital. That charter contained a proviso that no other life-insurance company should thereafter be chartered except upon the like conditions. Subsequently, in 1844, a charter was given to the defendant company, which was a company on a mutual plan and had a guarantee capital stock of a hundred thousand dollars, on which they had agreed to pay interest at the rate of 6 or 7 per cent. per annum as a security to the holders of the deposits. It was claimed by them that under this act they were not liable for the payment of any net profits at all, because they made none, it being a mutual company and the interest on the guarantee capital being a part of the expenses of operation. In order to make the charter of that company conform to the original contract between the State and the Massachusetts General Hospital and to supply the defect in the subsequent charters in respect to that obligation, for it took all its rights with the knowledge of the prior law, an amendatory act was passed declaring that they should pay one-third of the net profits over and above the 6 per cent. of the guarantee. That is all there is to that case. It was not a case in which

by an amendatory statute a new right was given to the State or any third person, or any new obligation imposed upon the defendants; but more clearly to require the subsequently organized company to conform to the very obligations which constituted the conditions of their corporate existence.

If I understood the argument correctly, this measure was justified on another ground, and that is that it was in the nature of a special act relating to bankruptcy, an act in prevention of bankruptcy, an act to provide for the distribution of the assets of this company, so as that it should not become a bankrupt, for the protection of creditors and stockholders. It is to be observed, in the first place that no creditor of the company, including the Government, has any lien by virtue of the existing law upon the income of the company derived from the use and operation of its property. The mortgages are confined to the body of the property, and do not express that they include the right to receive the income; and, even if they did, there could be no right to receive the income until after default made and until after the court had taken actual possession of the income by the acts of its officer, a receiver. That point has been expressly ruled by the Supreme Court in a case in 1 Otto, of Gilman and others *vs.* The Illinois and Mississippi Telegraph Company, to which I shall merely refer as establishing that proposition. Is there any ground of remedial justice that secures to a creditor or a stockholder of a corporation the right, upon any equitable principle, to intervene in advance upon the ground merely of his apprehension, and ask the court to protect him over and above and outside of the actual legal securities with which he is invested by the terms of his contract? The Senator from Massachusetts, [Mr. HOAR,] not now in his seat, when I first addressed the Senate on this subject, seemed to think that there was a ground on which intervention could be successfully justified, by providing a new remedy; but a new remedy implies an existing and ancient right. Under pretense of giving a remedy you cannot change and substantially alter actual obligations and duties and rights. There is a jurisdiction in equity at the suit of a stockholder, of a creditor sometimes, by invoking the preventive justice of that court to prevent the corporation from diverting their capital, from misapplying their property and income so as to defeat the legitimate purposes and objects of their existence; but that intervention is expressly limited to two classes of cases. There must be some sufficient and distinct acts alleged as justifying the grounds for the application, and they must be either, first, *ultra vires*, beyond the corporate power, and therefore null and void as against complaining stockholders or creditors, or else they must be breaches of trust. Beyond that, outside of those categories, there cannot be found, I venture to say, any reported case in which a court of equity has intervened to regulate the interior and domestic management of the affairs of a corporation. Wherever it has been attempted it has been refused. The principles on which the courts act in such cases are laid down by the Supreme Court of the United States in the case of Dodge *vs.* Woolsey, in the eighteenth volume of Howard. The court say:

> The result of the cases is well stated in Angell & Ames, paragraphs 391, 393: "In cases where the legal remedy against a corporation is inadequate, a court of equity will interfere, is well settled, and there are cases in which a bill in equity will lie against a corporation by one of its members." "Though the result of the authorities clearly is, that in a corporation, when acting within the scope of and in obedience to the provisions of its constitution, the will of the majority, duly expressed at a legally constituted meeting, must govern; yet beyond the limits of the act of incorporation, the will of the majority cannot make an act valid; and the

powers of a court of equity may be put in motion at the instance of a single shareholder, if he can show that the corporation are employing their statutory powers for the accomplishment of purposes not within the scope of their institution. Yet it is to be observed that there is an important distinction between this class of cases and those in which there is no breach of trust, but only error and misapprehension, or simple negligence on the part of the directors."—18 *Howard's Reports*, 343.

I recur to an observation made in the prior part of this argument, important now to be noted, that we are called upon to act in this instance, not by virtue of any powers or rights belonging to the United States as a creditor, but as a legislative power, as sovereign; and that we have the same right to put in motion this species of legislation in behalf of other persons as creditors as though the Government was itself not a creditor at all. That is the principle on which the bill of the Judiciary Committee proceeds; for it does not apply the sinking fund to the technical payment of the debt due to the Government or to become due, but claims to preserve it for the general purposes of those to whom it may be assigned as creditors of the corporation. The same power invoked now would be lawful, if lawful here, over every other corporation within the purview of the jurisdiction of Congress.

But more, Congress has jurisdiction to pass a uniform law on the subject of bankruptcy, and that applies not to corporations merely, but to natural persons, to all persons. If in reference to corporations subject to its control Congress has a right to anticipate the possibility of insolvency at a future day by reason of that jurisdiction to require the accumulation of 25 per cent. of their net income, why may they not pass a bankrupt law far more efficient than that cumbrous machine which my distinguished friend, the Senator from Kentucky, [Mr. McCREERY,] who is listening to me now, desires to remove, which shall not undertake to *cure* bankruptcies but to *prevent* them, and to say in advance that in order to meet the case of possible insolvency 25 per cent. of the net income of every citizen of the United States shall be paid into the Treasury to accumulate as a sinking fund at such rate of interest as it may suit the interest of the United States to pay, in order to be distributed in the event of insolvency among the creditors of the party? Why not? Congress has jurisdiction of the person, it has jurisdiction of the subject, exclusive jurisdiction, and if this preventive legislative jurisprudence can be invoked to the extent and in the degree requisite to sustain the present measure, why not make it general and apply it to all cases of possible insolvency? My objection to this bill is that it takes away from a citizen his property for no public use where compensation is proposed, but for private use, for the use of his creditors, who have not yet any claim against him, and without his assent. It is said the land is not taken the visible and tangible property is not taken; it is only the income. But where you take away from property its profit, what valuable interest is there left in it? You take away a man's income and where is his capital? You take away a part; by what right can he maintain and defend the rest? It takes it away not only without his assent, but in spite of his protest and in violation of your agreement with him.

It takes it away, as I say again, for no public purpose but for a private purpose. That you cannot do in this country lawfully under any circumstances as against any man. You cannot buy a man's property against his consent; you cannot compel him to sell it at any price for anything except a public use, and it is a mere abuse, a perversion of words, to call the use public because it is to pay a debt due to the Government, for, as I have again to repeat, as a creditor the Govern-

ment is a private person. There is no end of the fancies in which men may indulge as to what constitutes that public right which will furnish the excuse for invasions of private property. In the early days of Kentucky, when large bodies of land were unoccupied it was a great public necessity that population should be invited and that improvements should be made. Accordingly, in 1824 I think, a statute was passed by the Legislature of that State which required every holder of such a quantity of lands to put certain improvements upon them within a certain time, failing which any other person might enter, occupy, improve, and own. The validity of that statute, passed upon those apparent grounds of public policy, was questioned and decided as far back as the first volume of Dana's Reports in the case of Gaines *vs.* Buford, in which one of the judges, Judge Underwood, says:

> I know of no principle which will allow the Government, any more than an individual, after fairly selling and conveying land, to take back the land and resume the title, at its own pleasure, against the assent of the grantee. Neither am I acquainted with any principle which will allow the Government to *annex new conditions*, unknown at the time of the original contract; and for a violation of them seize the land, divest the citizen of his title, and retain the consideration which the citizen paid or rendered, without remunerating him therefor.—1 *Dana's Reports*, 486.

So in modern times, (for I shall not continue to offend the intuitive sense of jurisprudence dwelling in the breast of my friend, the Senator from Michigan, by referring perpetually only to old cases,) in the case of Palairet's appeal, reported in the sixty-seventh volume of Pennsylvania State Reports, the Legislature of that State sought to cut up by the roots and destroy forever the estates in perpetual rents, ground rents, a favorite mode of investment in that State, and particularly in the city of Philadelphia. Accordingly they passed a statute which authorized a sale of the reversion upon the petition of the tenant. The Supreme Court of that State held that without the consent of the owner of the fee it was an attempt to take private property for a private use, although it was attempted to justify it upon the ground of a public policy, and that it was unconstitutional and void.

Therefore, Mr. President, the apprehension is not a vain one that legislative ingenuity is unlimited in seeking out unknown methods of undermining the foundations of private right, and that it is well after all to stand by the ancient landmarks of the law and not to go in quest of these new discoveries in legislative jurisprudence.

As to the details of any arrangement which can be come to between the Government and these companies, I am entirely indifferent. Whatever they can be induced to consent to pay, whatever they can lawfully be made to pay, consistent always with that higher public interest which is contained essentially in their permanence as great national highways of trade and travel for carrying mpn and merchandise to and fro, I am willing and desirous that they should pay; but I stand here to-day suitably impressed, as I believe, by the solemnity of the responsibilities, public and private, under which I rest and act, and say that if the Government has to lose all the millions it has invested in the advances to these companies, I think it had better lose them than for Congress to give its assent to the propositions contained in this bill, a bill which settles nothing and unsettles everything, which in effect and in intent upsets the consequences of the decision of the Supreme Court of the United States judicially determining the very right between these parties, and refuses again to enter into any bond and obligation, no matter how severe and onerous to the other party, simply because Senators are unwilling to give up the

power to tease, to harass, to oppress, and impoverish. That may be regarded by some as a precious inheritance, the right to exert power merely to show that you have power, but my instructions in jurisprudence and political philosophy have taught me that power ought never to be exerted except upon justifying grounds and for beneficent and useful purposes.

When I addressed the Senate on a former occasion I announced my intention to move, and accordingly moved, that the bill reported from the Railroad Committee should be substituted for that reported by the Committee on the Judiciary. I now withdraw that motion in order that the vote when it comes to be taken may be taken directly and expressly upon the merits of the Judiciary Committee's bill.

The PRESIDING OFFICER, (Mr. FERRY in the chair.) The amendment is withdrawn.

Mr. CHAFFEE. Mr. President, I move to substitute Senate bill No. 1032 for the bill of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Colorado moves an amendment by way of substitute as stated. The Secretary will report the substitute.

The CHIEF CLERK. It is proposed to strike out all after the enacting clause of the bill reported from the Committee on the Judiciary, and in lieu thereof to insert:

That in order to establish a sinking fund for the purpose of liquidating the claims of the Government on account of the bonds advanced under said act of July 1, 1862, and the acts amending the same or supplemental thereto, to the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company, and to the Union Pacific Railroad Company, the Secretary of the Treasury of the United States is hereby authorized to carry to the credit of a sinking fund for the Central Pacific Railroad Company, a corporation organized and existing under the laws of the State of California, the successor, by consolidation, of the said Central Pacific Railroad Company of California and the Western Pacific Railroad Company, and to the credit of a sinking fund for the Union Pacific Railroad Company, the amount due, or which may be due, the said companies, respectively, for the carriage and transportation of the mails, troops, munitions of war, supplies, and public stores for the Government, under the acts aforesaid, up to and including the 31st day of March, 1878, which, if not amounting at said date to the sum of $1,000,000, shall be made up by the respective companies to that sum each, and any amount so found due said respective companies over $1,000,000 shall be paid over to said companies respectively.

SEC. 2. That the said Central Pacific Railroad Company and the said Union Pacific Railroad Company shall each pay into the Treasury of the United States, to the credit of said sinking fund, either in lawful money or in any bonds or securities of the United States at par, annually, the sum of $1,250,000, in equal semi-annual installments, on the 1st day of April and October in each year, commencing on the 1st day of October, 1878, and continuing such payments until and including the 1st day of October, in the year 1900. Interest on all sums placed to the credit of the sinking fund shall be credited and added thereto semi-annually, at the rate of 6 per cent. per annum. Upon the maturity of the first-mortgage bonds of said companies, the Secretary of the Treasury shall pay the same or any part of said bonds remaining due and unpaid out of the said sinking fund: *Provided, however,* That the said companies, or either of them, shall have the right to fund said first-mortgage bonds into a new bond, upon such time and terms as may be agreed upon with the holders thereof, and the present lien to secure said bonds under existing law shall remain valid until said bonds are finally liquidated. Any balance remaining due the United States from either of said companies on the 1st day of October, A. D. 1900, after deducting the amount standing to the credit of said sinking fund from the amount of said bonds, together with all interest thereon which shall have been paid by the United States, and interest on the principal of said bonds from the maturity thereof respectively to the 1st day of October, A. D. 1900, shall be then divided into fifty equal semi-annual installments, to be paid by said companies respectively, one of which shall be paid on the 1st day of April and one on the 1st day of October in each year, with all accrued interest from October 1st, in the year 1900, upon said balance remaining unpaid at the date of maturity of each installment, payable at the same rate of interest per annum as paid by the United States on the larger part of the public debt on the 1st day of January preceding the date of payment of the several installments.

SEC. 3. That the payments so to be made by said companies shall be in lieu of all payments required from said companies under said act of July 1, 1862, and the amendments thereto, in relation to the reimbursement to the Government for the bonds so issued to said corporations. In case, for any cause unavoidable by said companies, or either of them, there shall not be net earnings made sufficient for such payment, and for the payment of the interest on the first-mortgage bonds for any one year, the payments hereby required shall be abated for such time: *Provided*, That no dividend shall be voted, made, or paid to any stockholder in either of said companies at any time when the said companies, or either of them may be in default in respect of the payments required to be paid into the said sinking fund, or in respect of interest upon any debt which may be a prior lien to that of the United States; and any officer or person who shall vote, declare, make, or pay, and any stockholder who shall receive any such dividend, contrary to the provisions of this act, shall be liable to the United States for the amount thereof, which, when received, shall be paid into said sinking fund. And every such officer, person, or stockholder who shall knowingly vote, declare, make, or pay any such dividend, contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $10,000 and by imprisonment not exceeding one year.

SEC. 4. That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, as well as for the United States, subject, however, to the provision in section 2 of this act; but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner in this act provided, of any mortgage, lien, or other creditor of either of said companies respectively, nor to excuse either of said companies respectively from the duty of discharging out of other funds its debts to any creditor except the United States.

SEC. 5. That said companies shall not in any manner be released from their present liabilities to keep the said railroads and telegraph lines constructed under the acts of Congress aforesaid, in repair and use, and to transmit dispatches over said telegraph lines, and transport mails, troops, munitions of war, supplies, and public stores upon said railroads for the Government, whenever required to do so by any Department thereof, at fair and reasonable rates of compensation, (said rates not to exceed the amounts paid by private parties for the same kind of service,) the whole amount of which shall be paid by the Government to said companies on the adjustment of the accounts therefor, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid.

SEC. 6. That the President of the United States shall forthwith nominate and, by and with the advice and consent of the Senate, appoint a person skilled in the management of railroads, to be styled "the Pacific Railroad commissioner," whose duty it shall be to establish, from time to time, rules and regulations (subject to the approval of the Secretary of the Interior) to govern the operation and use of the several roads of the Union Pacific Railroad Company and the branch companies, and to oversee the observance thereof so as to afford and secure to the public and the Government all the advantages of communication, travel, and transportation over the said road and branches, as stipulated and defined in the several acts of Congress relating to the operation and use of said roads as one connected, continuous line, as well as to secure and enforce the mutual rights and duties of said companies to each other; which rules and regulations shall govern said companies in the operation and use of their respective roads until the same shall be found to be inconsistent with the requirements of said acts of Congress by final decree of the courts of the United States, as hereinafter provided.

SEC. 7. That if said companies, or any of them, shall neglect or refuse to conform to the said rules and regulations, the commissioner shall report the fact to the President of the United States, who, being satisfied of such neglect or refusal, shall, by his order, require said commissioner to direct the operation and management of the road of the company or companies so neglecting or refusing, and, if need be to take the absolute possession and control of and operate the same in accordance with such rules and regulations: *Provided, however*, That any of said companies may file a bill in equity against said commissioner and the other companies in the circuit court of the United States of any circuit within which any part of its road may be situated, praying a decree restraining the enforcement of such rules, regulations, or order, and declaring the rights and duties of the parties to such suit under the acts of Congress relating to said companies; and every such suit shall have precedence in the courts in which the same shall be pending, and service in such suit may be made anywhere in the United States by copy of the bill.

SEC. 8. That if the complainant, in any bill which shall be filed under this act, shall not implead all the other companies, any company omitted from such bill shall, upon its petition, be made a party defendant thereto.

SEC. 9. That such commissioner shall continue in office until he resign, or until removed by the President, and his salary, which shall be fixed at —— thousand dollars per annum, to be paid quarterly, together with all his reasonable and proper expenses for clerk hire, office rent, stationery, and other incidental expenses, to be approved by the Secretary of the Interior, shall be paid by the said several companies in proportion to the gross earnings of their respective roads, and as adjusted by said commissioner, after examination by him of the books and reports of said several companies.

SEC. 10. That it shall be the duty of said commissioner, from time to time, to report to the Secretary of the Interior in answer to any inquiries he may make of him touching the condition and management of said road and branch roads; and he shall communicate at any time such information as he may deem advisable to be in the possession of the Department, and he shall perform such other duties as are required under existing law to be performed by the five Government directors provided for by section 13 of the act of July 2, 1864; and that part of said section requiring the appointment of said five Government directors is hereby repealed.

SEC. 11. That upon the faithful compliance with, and performance of, all the requirements of this act relative to said sinking fund by said companies, or either of them, this act shall be deemed and taken as a final settlement between said companies, or either of them so complying, and the United States as regards the payment of said bonds and interest; in case of failure or neglect by either of said companies to perform all and singular the requirements of this act in regard to said payments as hereinbefore mentioned for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States, and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

SEC. 12. That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter to further alter, amend, or repeal the said acts hereinbefore mentioned or this act, except as provided in the preceding section; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in favor of the United States; and each and every of the provisions of this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said acts of 1862 and 1864, and of the amendments thereto and supplemental acts thereof.

Mr. CHAFFEE. Mr. President, several months ago I had the honor of addressing the Senate upon the subject of the Pacific railroad system, and more particularly upon the manner of the operation of these respective roads one with the other, the main line with the branches. Speaking of the unjust discrimination practiced by the Union Pacific Company toward the branch companies, I used these words:

> In my judgment it works a greater hardship than would be entailed by the entire loss of all the bonds loaned to the several companies, the ultimate payment of which the honorable Senator from Ohio [Mr. THURMAN] is so anxious to secure.

Sir, these were not idle words. I propose briefly to give some reasons why I used them then and why I repeat them now.

The Senator from Ohio, who sits near me, said yesterday that my prorate bill had no business with the funding bill, or words to that effect. I must beg leave to differ with my learned friend upon this point. In my judgmenn it has much to do with this question, and very much to do with the welfare of the public and with the honor of the Government.

Let us inquire for one moment what were the objects of the acts of 1862 and 1864. Why were these munificent grants made? Why were $64,623,512 in bonds of the Government issued and loaned to these corporations? Was it simply to enable the Senator from Ohio [Mr. THURMAN] to invent some plan by which the Government can be made more secure and ultimately to be repaid? Did the Government make this vast loan for the benefit of the interest upon the loan? Did Congress part with these bonds and agree to pay the interest on them for thirty years as a business transaction for profit and accept a second mortgage upon the roads as security? Yet my honorable friend from Ohio and his associates upon the Judiciary Committee seem to act upon the theory that the speedy repayment of this money

overshadows every other consideration of public policy in relation to the management and conduct of these several companies. In order to arrive at a proper consideration of the subject before the Senate, I propose to inquire into the object of the legislation which called these corporations into existence. The act itself declares this purpose in the following words. I cite section 18 of the act of July 1, 1862:

> And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes.

Again, in section 6 of the same act the companies were required to keep the roads in repair, so that the Government can at all times transport troops, munitions of war, supplies, and public stores, and the mails upon said railroads, &c., so that we see that the declared object of the Government was to promote the public welfare, as well as to enable the Government to use the roads for its own necessities and benefit, that this aid was extended to these corporations.

Mr. President, the theory of the whole legislation had upon this Pacific railroad system is upon this principle, and the branches reaching to widely separated points upon the Missouri River were included in the subsidy so lavishly bestowed, in order to better accommodate the public and the Government. If these were not the main objects sought for, why subsidize any branch roads? Why subordinate the security of the Government for the bonds issued? It is specially provided that the "track upon the entire line of railroad and branches shall be of uniform width, so that, when completed, cars can be run from the Missouri River to the Pacific coast."

Section 12 of the act of 1862 provides that—

> The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected continuous line.

Then, again, in section 15 of the act of July 2, 1864, it is provided:

> That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportations, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.

The idea of operating all of these roads as one family, without any discriminations of any kind, has never been lost sight of in any legislation had upon the subject. Now, sir, how has the object of the law been complied with in this respect? The Union Pacific Railroad Company has never complied with the law. On the contrary, it has openly defied the law and the Government by practicing the most unjust discriminations against the branches, utterly prohibiting them from any benefits of through traffic or travel and denying the public and Government any use whatever of the branches for transcontinental business. I do not intend to take up the time of the Senate now to show at any great length how the people of this country are damaged by the conduct of some of these companies; but I desire to read one or two letters from merchants in Denver to show how the State I represent in part upon this floor is practically embargoed by the unjust and unlawful discrimination of the Union Pacific Company:

DENVER, COLORADO, *January* 2, 1878.

DEAR SIR: I have read with much pleasure your speech upon the management of the Pacific roads. You are certainly on the right track, and I trust you will lay

on vigorously and spare not until the laws of Congress shall be obeyed by all the Pacific roads, both in letter and spirit.

As an illustration of the unjust discrimination which has been practiced against Colorado business, I will state that the firm of Martin & Cornforth, of Denver, (of which I am the senior partner,) has been compelled to pay on fruit shipments for Denver, Sacramento to Cheyenne, $425 per car-load; the same car would be taken, Sacramento to Omaha, (five hundred and sixteen miles more distance,) for the same sum, $425. The rate to Chicago from Sacramento is $500 per car-load. The rate per car-load Cheyenne to Denver is $90, making the through rates from Sacramento to Denver $515, to Omaha $425, to Chicago $500. This is but one illustration. There is the same kind of discrimination against Denver and Colorado whenever we wish to ship in dried fruits from California, or grain, fruit, or potatoes from Utah, and the same injustice in a marked degree on canned goods. The rates from the Pacific coast or Utah to Omaha, Chicago, Cincinnati, and Saint Louis are less than to Denver. I may add that the same discrimination is practiced against us when we desire to travel, as their published tariff shows: Omaha to San Francisco, $100; Cheyenne to San Francisco, $100.

Yours, very truly,

J. H. MARTIN.

Hon. J. B. CHAFFEE,
*United States Senator for Colorado.*

I will read another letter dated January 3, 1878:

DENVER, COLORADO, *January* 3, 1878.

DEAR SIR: Your speech has attracted the attention of all the business men of Colorado, and fairly elicited the most satisfactory comment by all parties.

Denver and Colorado have been suffering from the discriminations of the Pacific roads ever since they were thrown open for business. The law, as we common business men understand it, has been openly and flagrantly violated. Hundreds of thousands of Colorado's best acres having been donated to the Pacific Railroad Companies by Congress upon certain conditions, one of them being that there should be no discrimination for or against the business of any of the branches, we believe we have a right to at least fair play in the handling of our business by the Pacific roads.

To illustrate how we have been treated, allow me to state the following case: Since the completion of the Colorado Central Railroad between Denver and Cheyenne, I applied for a rate on a car-load of Utah dried peaches from Ogden to Denver. They gave me the following quotations: Ogden to Cheyenne, $500; Ogden to Omaha, $300—a discrimination of $200 per car-load against business for Colorado. I did not accept the rate, but will be compelled to purchase in Kansas City or Omaha.

Another case in point: Some months since I purchased in San Francisco a car-load of canned goods, and shipped to Denver, paying freight $390. The same car of goods, according to their advertised tariff, could have been delivered in Saint Louis for $300. So that, as a matter of fact, I am compelled to go to Saint Louis or Chicago to buy California canned goods at the best rates for Denver market.

Another transaction: I purchased three car-loads of sirup in five-gallon kegs. Upon inquiry I found that the cost from there to Denver direct, via Cheyenne, would be $4.10 per keg; but by shipping through to Omaha and down to Kansas City, consigned to an outside party, and from thence, via the Kansas Pacific road, to Denver, the sirup could be delivered for $3.25 per keg. Of course I shipped by the latter roundabout route, the goods being subjected to about fourteen hundred miles extra and useless travel and my house liable to serious loss and vexatious delay incident to the numerous transfers.

I could make a long list of these discriminations against Denver and Colorado which have fallen under my personal observation, if it was necessary to do so. It is a matter of public notoriety that Utah potatoes can be shipped from Ogden to Omaha cheaper than they can be to Denver.

In traveling between Denver and Utah and the Pacific coast we are discriminated against in the same manner. Your Colorado friends desire you every possible success in your efforts to have the laws of Congress honestly and faithfully enforced in this matter, so that Colorado business interests may not be repressed and dwarfed by the very agency the Government intended should foster and build them up.

Very truly yours,

WOLFE LONDONER.

Hon. JEROME B. CHAFFEE,
*Washington, D. C.*

I vouch for the truthfulness and respectability of these gentlemen; they are among our most respected citizens. The States of Kansas and Missouri are in the same situation. Indeed, sir, the people of all

the States south of the Ohio River are compelled to go north to Omaha in order to reach the Pacific coast, instead of embarking at Saint Louis in a palace car and going over the Kansas branch so as to intersect the Union Pacific at Cheyenne. The entire half of this Union is compelled by the unlawful conduct of the Union Pacific Company to travel several hundred miles north to Omaha and traverse the entire line of that road in order to reach the Pacific coast.

But, Mr. President, I do not intend to cover the same ground that I went over upon a former occasion to show the unjust discriminations of these companies. That they exist is a fact as patent as is the fact that the debt of the Government is accumulating from year to year. That these abuses of power ought to be corrected I contend is more important than merely to devise a plan to secure the money advanced to construct the roads; yet my honorable friend from Ohio is willing to ignore the immediate commercial interests of the people for the greed of the almighty dollar. I claim that if any settlement is to be made between the Government and these companies, this *pro rata* question should be made one component part of it; and this brings me to the bill I introduced yesterday, and to which I now desire to call the attention of the Senate. I shall briefly discuss this portion of the bill relating to the legal and proper mode of operating the main line and branches before referring to the other part proposing a sinking fund for the ultimate payment of the amount that will be due the United States. The bill simply provides that, by and with the advice of the Senate, the President shall appoint one commissioner who shall establish rules and regulations, from time to time, to govern the use and operation of these roads with each other, in accordance with existing law, adding nothing whatever to the law in this respect. If any of the companies refuse to conform to such rules and regulations made by the commissioner and approved by the Secretary of the Interior, the President is authorized, if need be, to take possession of the road of such defaulting company and operate the same. I will read section 7 of the proposed act:

> That if said companies, or any of them, shall neglect or refuse to conform to the said rules and regulations, the commissioner shall report the fact to the President of the United States, who, being satisfied of such neglect or refusal, shall, by his order, require said commissioner to direct the operation and management of the road of the company or companies so neglecting or refusing, and, if need be, to take the absolute possession and control of and operate the same in accordance with such rules and regulations: *Provided, however*, That any of said companies may file a bill in equity against said commissioner and the other companies in the circuit court of the United States of any circuit within which any part of its road may be situated, praying a decree restraining the enforcement of such rules, regulations, or order, and declaring the rights and duties of the parties to such suit under the acts of Congress relating to said companies; and every such suit shall have precedence in the courts in which the same shall be pending, and service in such suit may be made anywhere in the United States by copy of the bill.

Section 9 provides that such commissioner shall continue in office until removed by the President, and that his salary shall be paid by the respective companies according to the gross earnings of their respective roads.

Section 10 provides that the commissioner shall perform the duties now required of the five Government directors, whose duties are nominal and wholly unnecessary in my judgment, and consequently it repeals the provision of the law requiring their appointment. I do not suppose the Judiciary Committee or any member of it will question the constitutionality of the power of Congress to authorize the President to take possession of any of these roads as provided in this bill.

I do not propose to enter upon any full or detailed exposition of the power of amendment reserved by Congress in the acts of 1862 and 1864. That has been conclusively done in the speeches which have been recently made in the Senate during the discussion of this question; and in all of the authorities cited upon the subject, it is conceded that the power of amendment, however it may be otherwise limited, extends so far as may be at any time necessary in order to accomplish the original purposes of the acts. This is very distinctly stated in Miller *vs.* The State, 15 Wallace, 498, in these words:

> The reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant.

And again, in the Holyoke Company *vs.* Lyman, 15 Wallace, 500, it is said that the provision—

> Reserves to the Legislature the authority to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights under it, and which the Legislature may deem necessary to secure either that object or other public or private rights.

The last expression of opinion by the United States Supreme Court on this subject is in the case of Wright *vs.* The State of Ohio, not yet reported. Mr. Justice Swayne, speaking for the court in that case, says that the power of amendment is not without limitation. He does not state the limits in terms, but instances cases on the one side and on the other, to indicate how far the power may go. On the one side, to show the limit of the power, he says "that it has been decided by the court in New York that the Legislature cannot under the power of amendment require a railroad to build a bridge which is not in any way connected with its works or useful to it in the transaction of its business." The reason is that it is beyond the power of the Legislature to divert the property of a company to any object entirely foreign to the purposes of its creation. An instance on the other hand, cited by the learned judge to show how far the power may go, is a case decided by the court in Massachusetts, where it was held that a railroad company may be required to erect a station-house at a certain point, remove its structures and its track thereto, and operate its road in connection therewith, the power there being exercised simply to accomplish a purpose of the creation of the corporation, namely, to afford to the public conveniences in connection with the use of the road. These instances are but applications in particular cases of the rule as laid down by the United States Supreme Court in the cases in 15 Wallace, namely, that amendment may be made to almost any extent in order to accomplish the original purposes of the charter. The proposed legislation in this bill seeks to do nothing further, and is therefore clearly within the power of amendment reserved in the act as defined by the Supreme Court in the adjudged cases. Many other cases might be cited, but these are sufficient to establish beyond cavil all that is necessary for my present purpose.

But it may be said that the remedy proposed is equivalent to the taking of property without due process of law. In support of this proposition it may be insisted that the Union Pacific Railroad Company occupies toward the Government and the public the relation simply of a private party, and that as such its property is protected by the constitutional provision mentioned. But the Union Pacific Railroad Company is not, in respect of its duties to operate its road with the branches as one continuous line, simply a private party and to be dealt with as such. The case of the Union Pacific Railroad Company *vs.* Pennington, 18 Wallace, 32, 33, was a bill of injunction filed by the company to restrain the taxes levied by the State of Nebraska

upon its road, claiming to be exempt from such State interference because it was an agency of the Government. Mr. Justice Strong, delivering the opinion of the court in that case, states in very full and impressive language that this company is an agency of the Government for certain great public purposes, but the court holds that as such its property is not withdrawn from State taxation. In that case the court proceeded upon precisely the same view which was taken by it in the case of The Merchants' Bank *vs.* The Commonwealth, where the question was the right of the States to tax the national banks. Mr. Justice Miller, delivering the opinion of the court in that case, held that the national banks were the fiscal agents of the Government, but not in such wise as to withdraw them from State taxation. So that the railroad company and the banks stand upon precisely the same footing as agencies of the Government and as public servants. The same view of the Union Pacific Railroad Company is taken by the court in the case of The United States *vs.* The Union Pacific Railroad Company, 91 United States Supreme Court Reports, 72, and in several other of the cases to which that company was a party.

Statutes of the United States have from a very early period authorized most summary process against public officers and agents and their property when delinquent in respect of the performance of their duties. In 1813 an act was passed providing such a process against a public officer receiving public funds and in default in accounting therefor. The act was revised in 1820 and is now embodied in the Revised Statutes. It provides that if a public officer receiving public funds shall not duly account therefor to the Treasury the First Comptroller shall state the account and certify it to the Solicitor of the Treasury, who shall thereupon issue his warrant directed to the marshal of the district in which the delinquent lives. Upon this warrant the marshal may seize the goods and chattels, lands and tenements of the alleged defaulter and also of his sureties and sell the same on short notice; and he may even seize the body of the delinquent. No judicial process is had by any officer on behalf of the Government, the act simply providing that if the debtor feel aggrieved by any of these proceedings he may enjoin the same upon bill filed in the proper United States court. The validity of this act was called in question in the case of Murry's lessee *vs.* The Hoboken Insurance Company, 18 Howard, 266. In that case it appears that Swaurtout was collector of customs of the port of New York. Being delinquent in rendering his accounts to the Treasury, a warrant was issued against him and a certain lot of land was sold by the marshal upon it, and upon the one side title to the property rested upon the validity of this sale. Judgments were also recovered against him in the supreme court of the State of New York, upon which executions were issued to the sheriff of the county, who sold the same property to another party, which party claimed title under these judicial proceedings. The question was whether the proceedings upon the Treasury warrant were valid, two objections being taken thereto: first, that the statute vested in the Executive judicial powers; secondly, that the proceedings were had without due process of law. Both objections were resolved by the court in favor of the validity of the act of Congress and the Treasury warrant and the proceedings thereunder, and the title held thereby was sustained.

It is evident that the proceedings in the Treasury are in a certain sense judicial. The Comptroller must inquire whether the person sought to be charged is a public officer within the meaning of the act;

whether he has received public funds, and, if so, how much; whether he has rendered his account therefor or for any part thereof; what the amount of his delinquency is, and generally whether the case is one upon which a warrant should issue against him and against his sureties. These inquiries are precisely the same as those which would be presented to the court in a suit upon the bond for its determination; but the court held that notwithstanding this it was competent for Congress to vest this judicial or quasi-judicial power in an officer of the executive department of the Government. The court further holds that the warrant and proceedings under it are "due process of law," and that in order that a proceeding may be "due process of law" it is not necessary that there should be any action by a court of justice. If the attempt be made to distinguish the case of a public officer charged with public funds from the case of the Union Pacific Railroad on the ground that the former occupies to the Government some special official relation, what has already been said in respect of the objects of Congress in the acts under consideration and the character of the Union Pacific Railroad and its relations to the Government and the public show that it stands upon precisely the same ground. Its duty to furnish to the Government the speedy transportation of its great mails, of its troops, and of the public stores is of just as high and just as pressing a character as the payment into the Treasury of public funds by a public officer.

But this is not the only instance in which acts of Congress provide for summary process without judicial intervention. If a collector of the customs finds that property is sought to be imported into this country from abroad in violation of the customs laws he may seize it and sell it summarily upon short notice. So, too, if a distillery be operated in violation of the internal-revenue laws, it may be seized and closed by the collector without judicial process. So, too, national banks, their property and business, may be taken from the hands of their officers and owners and placed in the hands of a receiver, who may proceed to close their business upon an *ex parte* showing, to an order by the Comptroller of the Currency. In all these cases the seizure is made and the property converted without any intervention by any judicial authority or upon any judicial writ.

There is also another class of cases in which the process is equally summary. Under what is called the police power, laws for the seizure, impounding, and sale of cattle, swine, dogs, or any other property which is a nuisance to the public, have been justified. Cases in large numbers are collected and explained by Cooley in his work on Constitutional Limitations. They are too familiar to lawyers in the Senate to need explanation here. To one of these cases, however, I will ask attention for a moment. It is The Commonwealth *vs.* Alger, reported in 7 Cushing, 53. Under a colonial ordinance of Massachusetts the owner of upland bordering on the sea had an estate in fee in the adjoining flats, with full power to erect wharves and buildings thereon at his convenience and to any extent. A statute was subsequently passed forbidding the enlargement or extension of a wharf beyond a certain water-line, abridging of course the enjoyment of his property by the owner of the uplands. The statute also provided that a structure erected in violation of its inhibition might be summarily removed without any judicial proceeding whatever. The question was whether such statute was valid against the owner of the estate. The court in an elaborate opinion sustained the validity of the statute and justified the exercise of the summary power of removal by the administrative officer. In the exercise of the same power railroads have been

regulated in most important particulars. For instance, in respect of their grades and the crossings of the tracks of two companies and the apportionment of the expense of the work, in respect of ringing their bells or blowing their whistles, in respect of the establishment of flag-stations and station-houses, in respect of fencing their tracks, and notably in one of the great granger cases (reported in 4 Otto) where the power of the State Legislature to reduce charges for fare and freights was sustained, first by the supreme court of Wisconsin and afterward by the Supreme Court of the United States. Many other cases of the same sort might be mentioned.

The rule to be extracted from all these cases is that, if a company or a party be charged with a public duty and should use their property so as to interfere with the public convenience, a summary remedy may be applied by the administrative department of the Government.

We have seen that the Union Pacific Railroad Company has been endowed by Congress with very large powers, and upon it have been imposed most important public duties. Its powers have been conferred upon it in order that it might discharge those duties. One of the objects of Congress has been to provide for different sections of the country, by means of the branches, equal advantages and facilities in all respects, one with another, in the enjoyment and use of a great transcontinental railroad, and the duty resting upon the company has been expressed in clear, comprehensive, and precise terms. For the more certain accomplishment of the great purposes of Congress in creating and endowing this company, the power to prescribe by way of amendment new rules, and especially new remedies, was reserved. The legislation here proposed is in every aspect of it within the principles above briefly expounded. It may be completely justified simply on the power of amendment reserved in the acts, and also upon that power of supervisory control which Congress has over its own public agent.

Thus it will be seen that the power to seize the property of any one of these companies, upon its refusal to obey the laws, which it is proposed in this bill to vest in the Executive, is not a new power, but it has been conferred before and in many cases. In the acts of 1862 and 1864, in certain contingencies, the President of the United States is authorized to take possession of the entire property of the Union Pacific Railroad Company. Section 5 of the act of 1862 provides as follows:

> And on the refusal or failure of the said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States, provided this section shall not apply to that part of any road now constructed.

Again, section 17—

> *Provided*, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the 1st day of July, 1876, the whole of said railroads before mentioned, and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling-stock, machine-shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States.

Section 22 of the act of 1864 provides that "Congress may at any time alter, amend, or repeal this act." These stipulations are a part of the contract, and are as valid as any other stipulation in the con-

tract. This bill provides that if any company refuses to operate its road according to the contract the President shall take possession of it and perform the contract for such defaulting company. If the provisions of the acts of 1862 and 1864 are valid, it is within the power of Congress now to confer the same authority by this bill.

But the Senator from Ohio may still say, what has this subject to do with the funding bill? I will tell the Senator something that I fear he has forgotten, which does in my judgment bear upon this funding question. Does the Senator not know that one of these branches of the Union Pacific Railroad system owes the Government an original amount of $6,303,000 for bonds issued and loaned in the same manner and at the same time that the bonds were loaned the Union and Central Pacific Companies? This has been bearing interest ten years, which the Government has paid, making an amount now due the Government of over $9,000,000.

Does the Senator not know that on account of the unlawful discrimination of the Union Pacific Company against the Kansas Pacific this branch is at the present time in the hands of receivers upon motion of the first-mortgage bondholders, for default in interest due, and will be sold out unless something is done immediately to prevent these discriminations and open this road as a part of the through line to the Pacific coast? If this is done this sum of $9,000,000 can be saved to the Government. If it is not done the whole amount will be a total loss, and will aggregate over $16,000,000 at maturity. Yet my honorable friend from Ohio thinks this has nothing to do with the question now before the Senate.

Then again, if the Union Pacific is compelled to prorate with the eastern branches, thus dividing the business on the eastern half of its road, that company may not be able to pay quite so much money annually as proposed by the Judiciary Committee bill, so that Senators may see that this prorate question has much to do practically with the question before the Senate.

Mr. President, I have thus far spoken in regard to that part of the bill introduced by me yesterday which relates to the question of discrimination against the branches. I propose now briefly to examine the other portion of the bill relating to the funding question; and I may here remark that the first section of this bill is similar to and almost in the exact terms of the bill reported by the Railroad Committee.

The second section provides that each company shall pay into the sinking fund the sum of $1,250,000 in semi-annual payments, which sum shall be in lieu of all other payments required of said companies under existing law:

*Provided, however*, That the said companies, or either of them, shall have the right to fund said first-mortgage bonds into a new bond, upon such time and terms as may be agreed upon with the holders thereof, and the present lien to secure said bonds under existing law shall remain valid until said bonds are finally liquidated.

It is well known by the Senate that the lien of the United States is subordinated to the lien for an equal amount which the companies were allowed to raise upon their own resources by the issuing of bonds. Now, this bill provides that at the maturity of these bonds, which occurs some two or three years prior to the year 1900, the time to which this funding system is to run, the companies, in case they desire and are able to fund these bonds into a longer bond, shall have the right to do so, and the same lien shall exist until the maturity and final liquidation of the new bonds as exists now under the present laws. In case the companies are able at the maturity of

the first-mortgage bonds to fund them into new bonds, the amount in the sinking fund to be applied to the debt due the United States will be much larger; it will be equal to the amount of the par value of the bonds at maturity, which will be in round numbers about $27,000,000 for each company.

The Senator from Ohio [Mr. THURMAN] claims that this theory of a funding bill is equal to a new subsidy to the companies. I do not see how he can establish such a proposition.

Mr. THURMAN. It is sponging out so much debt by mere computation.

Mr. CHAFFEE. It is true the companies are to receive compound interest until the year 1900. Then, if the companies succeed in funding their first-mortgage bonds, this accumulation will, of course, wipe out a larger proportion of the debt; but, if they do not succeed and the United States is compelled to pay those bonds out of the sinking fund, the companies propose and this bill proposes that the balance of the debt due the United States shall be paid off in equal semi-annual installments running fifty years, with interest upon all sums remaining unpaid, to be paid at the date of each installment. I cannot see any new subsidy in such a proposition.

This bill, as I said before, proposes that each of these companies shall pay a certain amount in round numbers, regardless of any half transportation or any 5 per cent. of net proceeds from the earnings of the road. I believe that that is a fair, plain, business-like view to take of the question. Let the companies pay a certain amount. If this is not enough, if the Senate shall think that $1,250,000 each is too small an amount, let us make it more, but let us make it a finality, an ending of this question, and not undertake to pass a law by which controversy will be extended through all time to come.

Mr. THURMAN. If it does not interrupt the Senator from Colorado, I should like to say a word right here on the question where the new subsidy is.

Mr. CHAFFEE. Very well.

Mr. THURMAN. If I understand the Senator from Colorado, he thinks there is no new subsidy in this business because the sinking fund at the maturity of the bonds may be applied to pay off the first-mortgage bonds. That is his idea.

Mr. CHAFFEE. Yes, sir.

Mr. THURMAN. But let us see who is to pay them off.

Mr. CONKLING. Of which bill is the Senator speaking now?

Mr. THURMAN. The Railroad Committee's bill and the substitute of the Senator from Colorado. Let us see who is to pay them off. According to the Railroad Committee bill and according to the substitute of the Senator from Colorado, the Government is to take its own money—that is, the money which it is entitled to receive from these companies and which it is entitled to credit them with instantly each year, as it happens to be received, and which is only a credit for just that same amount—and the Government is to put that nominal sum into a sinking fund and compute interest on it at 6 per cent., compounded semi-annually, until the year 1900, the effect of which would be that the interest would be two and a half times more than the principal and the Government would stand debtor for that much money as belonging to the sinking fund; and, suppose it is paid off in discharge of the first-mortgage bonds, the amount of it is that the Government pays three and a half times as much as it receives.

Mr. CHAFFEE. The Senator says the Government pays its own money. It takes the money out of the sinking fund paid in by the companies.

Mr. THURMAN. But how is the sinking fund constituted according to the Senator's substitute?

Mr. CHAFFEE. It is constituted by requiring each of these two railroad companies to pay into the Treasury of the United States $1,250,000 annually.

Mr. THURMAN. And allowing them interest upon that at 6 per cent., compounded semi-annually.

Mr. CHAFFEE. It enables the companies to pay the bonds.

Mr. THURMAN. But of the $1,250,000 which you require each of them to pay annually, two-thirds, under the existing law, is money of the United States, belongs to the United States.

Mr. CHAFFEE. The Senator does not know that. That he anticipates; that he estimates. That is a question for the business of the future. He does not know how much the net profits of these roads will be for any year hereafter; neither can he tell how much the half transportation will be. He estimates that. He can judge from the past, of course; but does not the Senator know that the Indian question, from which the larger amount of transportation for the Government over these roads has been derived, is now settled, or nearly so, and the prospect is that other roads may be built across the continent which will take away a portion of the business of these roads? The Government, as the Senator from California suggests, will have the same right to transport over those new roads, and of course it will undoubtedly divide a portion of its business according to the section where the transportation is desired with the other roads.

Mr. CONKLING. May I ask the Senator what is to be done with the bonds, on his theory, deposited as the representatives of the sinking fund?

Mr. CHAFFEE. There are no bonds deposited. The companies are to pay money.

Mr. CONKLING. So I thought until I heard the Senator from Ohio say that his remarks applied equally to either bill. I had the substitute of the Senator from Colorado yesterday, but somebody has carried it off so that I have not been able to read it to-day. I was misled by the remark of the Senator from Ohio. I understood the Senator from Ohio to say that the proposal was to have bonds and the Government was to pay compound interest on those bonds, thus paying three and a half times the amount to be ultimately received back.

Mr. THURMAN. No; I only spoke about bonds in connection with paying off the first-mortgage bonds. I did not intend to say—if I did it was certainly a slip of the tongue, and I do not think I said it—that either the plan of the Railroad Committee or the plan of the Senator from Colorado contemplated any investment in bonds. It is mere book-keeping with both those plans.

Mr. CONKLING. Then, if I may be still indulged a moment in my dialogue with the Senator from Ohio, his objection, if I understand it, is that the payment of $1,250,000 a year into a sinking fund would be composed in part of moneys which he says belong to the Government at the time.

Mr. THURMAN. Certainly.

Mr. CONKLING. That is the extent of his criticism.

Mr. THURMAN. Under the existing law.

Mr. CONKLING. Well, the moneys belonging to the Government at the time, belong to it, I take it, in order to liquidate and satisfy the obligations of the companies toward the Government; do they not?

Mr. THURMAN. To be sure, and they are presently applicable.

Mr. CONKLING. Then does the Senator from Ohio see any objec-

tion in the statement he makes if the object of the possession or custody of or right to these moneys by the Government is ultimately to indemnify and save harmless the Government against possible loss on account of the companies, does the Senator see in that fact an objection to any arrangement which insures that consummation? Let me state it again. Suppose the Senator could see in the bill proposed by the Senator from Colorado a mode in which, at a specified future day, absolutely as far as human foresight can be absolute in its vision, the Government would be indemnified, would be paid, reimbursed entirely, would it be an objection in his mind that the *modus operandi* was such that certain custody, by way of a sinking fund, was ascribed to moneys which currently, as they accrue under existing law, belong not to the corporation but to the Government?

Mr. THURMAN. Why, the Senator does not understand me, and he does not understand the proposition.

Mr. CONKLING. I seem to myself not to understand the Senator. I presume I do not. I wish he would make me understand him.

Mr. THURMAN. I will, if the Senator will sit down.

Mr. CONKLING. I always sit down when the Senator from Ohio speaks.

Mr. THURMAN. I hope we are not interfering with the Senator from Colorado.

Mr. CHAFFEE. The Senator is not interfering at all. He can make so much better a speech than I can, that I would rather he should go on.

Mr. CONKLING. I feel the same way.

Mr. THURMAN. If the Senator from New York held my note for $10,000, and I should go to him and pay him a thousand dollars, which by the terms of the note he would be entitled to receive to-day, the rest of the note not being due for some time to come, and I should say to him "credit me, not with the thousand dollars that I have paid on this note, but put this thousand dollars into a sinking fund, make an entry on your books, and compound interest on it semi-annually at 6 per cent. for ten years" or twenty, as it is in this case, "and then credit me with the amount to become due," I might pay off my whole note with that thousand dollars. That is exactly what the proposition is.

Mr. CONKLING. Is that the Senator's mode of making me understand it?

Mr. THURMAN. I am trying to do it. If it is a defective mode, it is not for want of understanding in the Senator.

Mr. CONKLING. Mr. President——

Mr. MORRILL. I think, if the Senator from New York will permit me——

Mr. CONKLING. I wish the Senator from Vermont would let me try a moment now. This has come to a point where I think there is a hope of my being able to do something with it. [Laughter.]

Mr. President, analogies are always dangerous. Illustrations have no value at all unless they are true. A caricature may sometimes bring out a likeness, but a caricature always distorts and destroys a legal argument proceeding by parallels. Why does the honorable Senator from Ohio, if he believes as I stated that my purpose is to inform myself on this point, mislead me, turn away and confuse the Senate, unless other Senators understand much more about this matter than I do, by displacing entirely the considerations involved, by changing the whole thing, and if he will take no offense at it I will say by distorting the whole proposition. He says that it is as if I

hold his note and he comes to me when the note is due and says "I propose to pay you a thousand dollars when the thousand dollars is due, but in place of allowing you, as the law allows you, to do as you choose with the thousand dollars that I pay, I ask you now to allow me to make a sort of special deposit of it, which shall withhold from you the right to use this money, the right to place it and appropriate its earnings, but which shall make you the mere manual custodian of this money to earn interest for me, and when it has earned that interest then I ask you to apply that upon the note." Mr. President, the Senator need not have stated half that proposition to state one which would shock the sense of a child, and a young child at that. Why did he not take the case of an obligation not due, an obligation not to become due except in a far future?

Mr. THURMAN. Because there is no such case here. That is the reason.

Mr. CONKLING. Does the Senator say that?

Mr. THURMAN. I do.

Mr. CONKLING. In spite of the decision of the court?

Mr. THURMAN. I say the decision of the court has nothing to do with the question.

Mr. CONKLING. Why has it nothing to do with the question?

Mr. THURMAN. Will the Senator hear me?

Mr. CONKLING. Always.

Mr. THURMAN. The Senator says it is not due. Why, by the very terms of the charter 5 per cent. of the net earnings and the half-transportation account are due every year and are a present payment with which these companies are entitled to be credited. It is not, therefore, getting money in advance of our being entitled to it under the law. We do not get a dollar in advance of what we are entitled to under the law. But here is a contract which says just as much as if it were in so many words, let us estimate the half transportation and 5 per cent. of net earnings as in the case of the Union Pacific at $750,000 a year, and that will be about a fair estimate of the last six years——

Mr. CHAFFEE. Why does not the Senator from Ohio estimate it at a million?

Mr. THURMAN. I have not estimated it at a million, because I take what is most favorable to the company—the last six years. But let me go on.

Mr. CHAFFEE. It would be better for your argument if you estimated it at a million.

Mr. CONKLING. Do not be too stingy in helping yourself.

Mr. THURMAN. Now suppose that, instead of the sum being a mere matter to be found by experience, the charter had said "the Union Pacific Railroad Company shall pay every year $800,000, which shall be credited to it at the time it is paid upon its indebtedness to the Government of the United States;" that would have been in principle exactly what it now is. The only difference would be that there the sum would have been fixed and here it is ascertainable. *Id certum est quod certum potest* applies. The case in principle would be precisely the same. Each of these substitutes proposes that $800,000 (which by the charter is payable annually and which by the charter is to be annually credited to the company, simply the amount paid) shall, instead of being put to the credit of the company, be received by the Government, used by the Government, and disposed of as it pleases, but that the Government shall allow credit not simply for that sum, but shall make a book account for twenty years, and allow

credit not only for the amount to which the company was entitled to credit, but also for twenty years' compound interest. If that is not a new subsidy, I do not know what is.

Mr. CONKLING. The honorable Senator wanders from the point which I was endeavoring to state. I asked him why he did not take the case of an obligation not due. In place of meeting that question he says that a certain portion of the obligation is due.

Mr. THURMAN. Well.

Mr. CONKLING. I deny that as he states it, although it is quite beside my purpose. I asked him why he did not take an immature obligation for his illustration. He said there was no such case here. What is due? The bonds? The debt? The whole debt which the Senator says he wants to secure to the United States? Is that due? No; that is not due, and that is what I am talking about; that is the correlative of the note in his supposed case.

But I have another objection to the Senator's answer. He says 5 per cent of the net earnings is due. How does he know that? He has explained in several productions which the world will not willingly let die what he believes "net earnings" to be. Every court to whom it has been submitted differs with him. He has stated what he understands the obligation to be of amassing funds by withholding transportation compensation; and as far as I know every court that has passed upon the question differs with him. Therefore I deny that even that part which the Senator refers to of this obligation is due in any sense which entitles him to affirm it as something which me must accept and act upon.

Mr. President, nothing could have been further from my purpose than to be drawn at this moment, if at any moment, into a discussion of this question. I shall not be drawn into any general discussion, particularly as I am intruding upon the Senator from Colorado. I will go back, however, to state what moved me when I rose. After hearing the distinguished Senator from Ohio, (and nobody will ever state more clearly than he has stated one side of these propositions,) I cannot understand, dismissing all question of constitutional power, disregarding all considerations of good faith, looking at the single question what is best in money interest, any reason why we should discard an arrangement because it contains something less injurious to the other contracting party than another might, provided it is certain in the end to work out the result. I cannot comprehend why that arrangement is not the best for the Government which is best for these corporations, provided it gives bond and assurance that the advance made by the Government for the building of these roads and the interest meanwhile shall be rendered back in the end to the uttermost. Creditor or sovereign—discussion has been waged to ascertain which—what interest has the United States in inflicting needless injury upon these parties? If none, then if the Senator from Colorado has a scheme which I mean to understand better than I do—I repeat, I had his bill yesterday; I believe he gave it to me himself; and somebody wanted it more than I and carried it away and I have not been able to possess myself of another copy; I will try to understand it before the Senate meets again—if he has a scheme which indemnifies the Government in the end, and the only objection to it is that it does it by an arrangement less austere than some other, I am for that bill.

Now, Mr. President, while I am on my feet, if the Senator from Colorado will indulge me a moment in that connection, I beg to state two or three things. I will never vote knowingly as I would not vote

if these parties were not corporations. That is one thing I will guard myself against. I will never inflict upon these artificial persons that which I would not insist upon against a natural person. Gold may be bought too dear; and we cannot afford to do that against a party unpopular, odious, and hateful to-day, which we would not be willing to abide by to-morrow in the case of the most cherished favorite of the Senate. I see that amuses the honorable Senator from Ohio.

Mr. THURMAN. It does.

Mr. CONKLING. He says it amuses him. Mr. President, I am speaking of the fact that the law is no respecter of persons, that the law shall be the same, whether for the man who is clothed in purple and fine linen and fares sumptuously every day, or for the man who lives in a hut and has nobody to befriend him; and the honorable Senator from Ohio says he is amused at that!

Again, I will never give a vote knowingly, prompted or incited by the fact that these corporations have made money and have not lost money. I have heard over and over again statements here of the profits which they have earned, the dividend they have divided. Mr. President, on this question in this forum are we to measure or withhold from them any modicum of justice or results because in the venture and vicissitude of this great work the time has come when profits, and not losses, have fallen to them? I hope not. If not, then again I say that the fact that a particular proposition consists with the interest of these parties, in place of condemning, commends it, if it be one which indemnifies the Government and answers the purpose; and it will not do to treat this as in a supposed case like an obligation the whole of which is due, all of which we may demand, and speak of all terms as lenity and concession.

A moment ago I was looking at the report made by the Senator from Ohio, and one thing struck me to which I will call his attention before I sit down, because he had spoken of our right to this 5 per cent. of net earnings. This report recites in brief phrases what few of us have forgotten, that we sent these corporations by direction of statute to the judicial courts to ascertain whether the 95 per cent. of net earnings to which they were entitled meant 95 per cent. of gross earnings or 95 per cent. of net after all expenses were paid. That circumstance is alluded to. I do not discover here any allusion—perhaps it is here—to the fact that the court said (I do not mean the Supreme Court, but the other court, the court below) that the railway companies were right and we were wrong upon that question.

Mr. THURMAN. What case does the Senator refer to?

Mr. CONKLING. In which the court said that?

Mr. THURMAN. Yes, sir.

Mr. CONKLING. My impression is the Court of Claims said that.

Mr. THURMAN. Not a bit of it.

Mr. CONKLING. Did it not?

Mr. THURMAN. No, sir; it never did.

Mr. CONKLING. I will deduct, then, from what I was saying. I thought the court had recently given a broad intimation——

Mr. THURMAN. I know exactly what case the Senator refers to. It is a mere *pro forma* decision of the circuit court in Iowa, and it shows on the record that it is *pro forma*.

Mr. CONKLING. But I drop that part of my statement. The Senator rises to make it still appear on the principle I suppose on which the English always fire a gun when the flag is down, to remind everybody of their victory. I drop that part of my statement and I come

to this: the honorable Senator having alluded to that drops this little observation in this report:

As to the past we leave the question upon the law as it now stands to the decision of the Supreme Court in the case pending before it.

As to the past, upon this vital and essential matter of agreement he proposes to leave the court to determine this case which we ourselves sent there agreeing to abide the event, agreeing to it not only by the act but by the implication. As to the past he proposes to allow the court to render a decision; but as to the future, he proposes to make a new law to dispose of this very important question which he and the other constituents of the two Houses once agreed to submit not merely to arbitration but to the decision of the national courts, themselves the creatures of the Constitution and statutes of the United States.

Mr. President, for one I am willing to admit, in the presence of that proposition as there stated, that I will vote to enunciate such a doctrine and to petrify it into a law, if I ever do vote for it, when I have ascertained that milder means, not departing so far from the ancient ways, are insufficient to secure the Government what will ultimately be the Government's due; and certainly I will never vote for it in preference to any plan which is certain and to which no objection can be made other than objections of the kind alluded to by the distinguished Senator from Ohio.

Now, Mr. President, I beg pardon of the Senator from Colorado for taking so much time. I see the danger of asking a question, and I am very sorry that I interrupted him so far.

Mr. THURMAN. I only want to say that when I can have the floor without interfering with the Senator from Colorado I will try and show the point so clearly that even the Senator from New York, who seems to know nothing at all on the subject, will be able to comprehend it.

Mr. CHAFFEE. Mr. President, if the proposition made by the Senator from Ohio is true, I am ready to admit that my bill and my theory of the sinking fund are absurd. He states substantially that this amount is now due the Government, and upon that theory my bill would be an absurdity, it would be a subsidy as he claims; but is that the fact? The Supreme Court has decided that the interest is not due until the principal is due; that both the bonds and the interest become due and payable at the maturity of the bonds.

Mr. THURMAN. Will the Senator allow me to say that the Supreme Court has not decided any such thing? The Supreme Court has not decided as broadly as he states it.

Mr. CHAFFEE. Then I should like to ask the Senator why he proposes the same theory in his bill?

Mr. THURMAN. No, I do not.

Mr. CHAFFEE. He proposes a sinking fund to run at 5 per cent. until the maturity of the first-mortgage bonds.

Mr. THURMAN. If the Senator will hear me he will see that he is wrong. The Supreme Court have only decided this, that except so far as the 5 per cent. of net earnings and the half-transportation account (which are applicable annually) extinguish the interest, there is no obligation to pay the interest until the end of the maturity of the bonds.

Mr. CHAFFEE. The 5 per cent. of the net earnings and the half-transportation account are not only to apply to the interest but to apply to the bonds.

Mr. THURMAN. If sufficient.

Mr. CHAFFEE. They apply to the bonds equally with the interest. The law says so.

Mr. THURMAN. But how much is applicable, I ask the Senator?

Mr. CHAFFEE. Is it applicable whenever it is paid, annually?

Mr. THURMAN. Certainly; annually.

Mr. CHAFFEE. I am willing to admit that the half-transportation account and the 5 per cent. of net earnings are to be paid annually into the Treasury of the United States. By the substitute which I propose the payment required of each company of $1,250,000 annually is in lieu of those payments which they are now required to make. But upon the 1st day of October in the year 1900 a balance is made, and whatever remains due the United States, after taking therefrom the amount accumulated in this sinking fund, is to be paid, dollar for dollar, and interest upon every dollar, which is equivalent to the payment of the whole debt in the year 1900; because the United States may as well receive the bonds from this company or receive the payment of interest equal to the interest that the United States has to pay upon its debt, as you have the money paid into the Treasury of the United States.

Mr. President, if there is to be any ending of this Pacific Railroad question, if the suits that are pending in the courts and which have been pending from the time the road was completed, and which will be pending, in my judgment, if the theory is adopted of the Senator from Ohio, until the maturity and final payment of the bonds—if these suits are to be ended, why not say pay so much into the Treasury of the United States in lieu of all other debts? Let us end this vexed question of what are the net earnings of the roads.

I see no objection to the substitute which I propose. I see nothing wrong in principle in it. The Senator may say that the amount required by the Government from these companies annually is not large enough, but I can see no reason why he should condemn the theory of the measure, because it is based upon the same theory as his own bill, except that in his bill the 5 per cent. of the net earnings and the half transportation are paid annually into the Treasury of the United States.

Section 4 of my bill is substantially a section from the bill of the Senator from Ohio providing for the security of all creditors who have priority to the Government of the United States.

Section 5 provides that the companies shall not in any manner be released from their present liabilities to keep the railroads and telegraph lines, constructed under the acts of Congress, in repair and use. It is substantially the same as the provision of the bill of the Senator from Ohio.

Mr. BURNSIDE. Will the Senator from Colorado allow me to ask him a question?

Mr. CHAFFEE. Yes, sir.

Mr. BURNSIDE. Does the Senator's bill contemplate that the payment of one-half the transportation and 5 per cent. of the net earnings shall be made into the Treasury of the United States annually as a payment without reference to drawing interest in a sinking fund?

Mr. CHAFFEE. The bill that I introduce provides that the half-transportation account shall be paid to the companies and that the payments required of the companies shall be in lieu of all other payments, as the Senator will see by reading the second section.

Mr. BURNSIDE. If the Senator will look at it a moment he will see that there is very little difference between his bill and the bill proposed by the Railroad Committee. Suppose the Government of the

United States has no claim upon either of these railroad companies for its issue of bonds; in other words, suppose that the issue of bonds were a gift to the company by the Government of the United States, and the company agreed for a period of years to pay to the Government 5 per cent. of its net earnings and one-half of its transportation. Then to determine what that is worth to the Government, the Government would simply have to take that money as it is paid in annually and invest it in its own securities, to simply open an account with an equal number of securities and find what the Government would have to pay, principal and interest, at the end of twenty years for just exactly that amount of money paid in, in principal and interest. This one-half of the transportation account and 5 per cent. of the net earnings is certainly due the Government each year. That certainly should be paid to the Government and there should be no interest allowed upon that to the parties paying it in. If anybody is to gain interest upon that the Government of the United States should gain the interest by investing it in its own interest-bearing securities.

Mr. CHAFFEE. It is a question for the Senate to decide which is the better way to arrange this matter. I say the better way is to receive so much money from the companies in lieu of all other payments.

Mr. BURNSIDE. I am trying to get as a starting point at the obligation which the companies owe to the United States. They are to pay to the United States every year 5 per cent. of their net earnings and one-half of the transportation account, without reference to any other indebtedness, without reference to the bonded indebtedness at all.

Mr. CHAFFEE. There is no dispute about that.

Mr. BURNSIDE. If the Senator will allow me, that amount certainly belongs to the Government of the United States and no interest should be allowed to the companies for that sum. That money is to be used by the Government for just what it pleases, for its current expenses or for the liquidation of its own indebtedness. When the Government liquidates its own indebtedness it applies its interest-paying securities; and that certainly should form no part of the fund on which the companies are drawing interest. There is no mode of reasoning by which that can be claimed, that I can see.

Mr. CHAFFEE. I do not dispute the position taken by the Senator from Rhode Island. One-half the transportation due these companies from the United States is to be retained by the United States, also 5 per cent. of the next earnings of the companies, under existing law. The proposition by my bill is to receive a certain amount annually until the year 1900 in lieu of these payments, which shall be put into the sinking fund and compounded, as proposed by the Senator from Ohio, [Mr. THURMAN.]

Mr. BURNSIDE. I should like to ask the Senator a question. This money is due the Government of the United States in payment. The Government does not want anything in lieu of it; it wants the payment. The Senator proposes to settle the question by putting in more money and establishing something like a sinking fund and having an equitable arrangement made.

Mr. CHAFFEE. That is exactly my bill. If the Senator will look at the bill he will see that is exactly what the bill proposes. In lieu of these payments, each company is required to pay a much larger sum than the half-transportation account and 5 per cent. of the net earnings.

Mr. BURNSIDE. The companies are to pay in a much larger sum

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and the companies are to be allowed interest on that sum all the time.

Mr. CHAFFEE. Certainly.

Mr. BURNSIDE. Why should they receive interest? They should not receive interest on that part of the amount paid in which would be equal to 5 per cent. of the net earnings and one-half the transportation, because that is to be paid in any event. That much is due to the Government of the United States from the companies. The Senator seems to lose sight of the fact that, notwithstanding the Supreme Court of the United States has decided that the bonded indebtedness is not due until a certain period, twenty years or more hence, there is still due to the Government of the United States from the companies a certain amount every year. That amount should be counted as due the Government and it should be paid to the Government. It should form no part of any sinking fund and should not be taken into contemplation in making a sinking fund.

Mr. CHAFFEE. It is simply a question for the judgment of every Senator whether it is better for the Government to retain its present position and receive the half transportation and this 5 per cent. or whether it is better to receive a certain amount, as proposed by my amendment. For my part I believe that it would be better to settle all these questions and receive a stipulated sum per annum.

Section 11 of the bill which I propose as a substitute provides:

> That upon the faithful compliance with, and performance of, all the requirements of this act relative to said sinking fund by said companies, or either of them, this act shall be deemed and taken as a final settlement between said companies, or either of them so complying, and the United States as regards the payment of said bonds and interest; in case of failure or neglect by either of said companies to perform all and singular the requirements of this act in regard to said payments as hereinbefore mentioned for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

It will be observed that the provision in the bill of the Senator from Ohio leaves the question open, so that if the companies or either of them conform strictly to all the provisions of his bill any Congress hereafter may step in and increase that amount. It is no settlement; it is no ending of this matter.

Mr. MORRILL. May I ask the Senator from Colorado if he has entered into any computation as to what the result would be? That is to say, has he entered into any computation to show whether the Government would not lose more by receiving, say, $1,200,000 annually, in a lump sum, and giving interest, compounded semi-annually upon it, than it would to retain the average amount that we have received for the transportation account and the 5 per cent. of net earnings? I think if he has done it he will have ascertained that the Government would give away more in allowing semi-annual compound interest upon the 5 per cent. of net earnings and the half of the transportation than the whole sum that he proposes to add to the transportation account.

Mr. CHAFFEE. I have made no computation of the kind. I claim that the Government loses nothing, because this sum is paid into the sinking fund before the amount required is due, with the exception, however, of the compounding of the interest upon the amount of half transportation and 5 per cent. of the net earnings, which I admit that the Government would lose. But the Government can invest this money. It can invest it in Union Pacific Railroad bonds

and accumulate interest on them at the rate of 6 per cent. per annum. It loses nothing, except upon the half transportation and the 5 per cent. now due the Government.

Mr. MORRILL. Yes; but my point is that we lose more on that than what we gain by the additional sum proposed to be added.

Mr. CHAFFEE. I have made no computation of the kind, nor do I conceive that that result would be possible.

Mr. MORRILL. The Senator will find that it is possible if he makes the computation.

Mr. CHAFFEE. Nor do I conceive it possible for any Senator to say exactly what the half-transportation account or the 5 per cent. of net earnings would be. It is merely a conjecture.

Section 12 provides:

> That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter to further alter, amend, or repeal the said acts hereinbefore mentioned or this act, except as provided in the preceding section.

That is to say, if the companies comply with the provision in regard to the sinking fund, and pay in regularly every six months $625,000 each, that is to be a final settlement as far as the funding bill is concerned, and it ought to be. I cannot conceive upon any principle of justice how any Senator could support or advocate any other proposition. If the companies comply with all the requirements why should it not be a final settlement of the question. If they do not comply, the substitute which I propose provides that it shall operate as a forfeiture of their franchises. The penalty is severe.

Such, Mr. President, are the provisions and purposes of this bill, which I offer as a substitute for the two funding bills recently reported—the one from the Judiciary Committee and the other from the Railroad Committee—and which I now urge upon the favorable consideration of the Senate. I believe it is a fair, honest, business-like measure, one that is perfectly plain and easy to understand, and one that can be complied with by all the companies without misunderstandings involving the Government and the companies in endless suits and controversies. The scheme of this great transcontinental railroad system, binding together all parts of our common country in the bonds of social and commercial union, was, as I have said, a grand one and worthy the statesmen who conceived it. But the history of the frauds connected with its construction and the wrongs practiced upon the public in its operation have shocked the moral sense of our own people and caused the finger of scorn to be pointed at us as a nation. It is high time that the power of this Government was employed to compel all these companies to respect and faithfully carry out all the obligations incurred by them to the public and the Government. Let there now be a final ending of this question on the principles of justice to all concerned, and let the executive power of the Government be invoked to maintain the majesty of the law.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Colorado, [Mr. CHAFFEE.]

Mr. THURMAN. Mr. President, I gave notice yesterday that I would ask the Senate to sit this measure out to-day, but I have been appealed to by Senators who say that they wish to speak and cannot speak to-day with any convenience to themselves or any justice to the Senate. I have no disposition certainly to insist upon any course that would cut Senators off in the expression of their opinions upon this measure; but I must renew the expression of the hope that to-morrow we shall sit the bill out.

Mr. WHYTE. I desire to ask the Senator from Ohio a question. I want some information before voting on his bill. I desire to ask him if there is any legal impediment to our requiring these railroad companies to pay in full the interest semi-annually paid by the United States hereafter upon the bonds issued to the companies?

Mr. THURMAN. There is a certain amount which is payable under the existing law and applicable to reimbursing the United States that interest. Undoubtedly, in my judgment, it would be competent for us to say that they shall pay annually such an additional sum as, with the half-transportation account and the 5 per cent. of net earnings now applicable under the existing law, would make the amount of interest which the Government annually pays on the Government loan. The object of the Judiciary Committee bill is to require that and something more.

Mr. WHYTE. So I understand.

Mr. THURMAN. The object is to require that and also to require on an average of the last four year's business of the companies a payment of what would amount, if my recollection is right at this moment, (I have not my figures before me,) to something like $300,000 or $350,000 a year.

Mr. WHYTE. Three hundred thousand dollars.

Mr. THURMAN. This is to be required from each of the companies toward the principal. A very small sum it may seem, and yet it amounts to a good deal in the end with the compounded interest upon it.

Mr. WHYTE. That is just my difficulty. I am rather opposed to this sinking-fund theory, and I supposed there was no impediment to requiring the companies to pay, in addition to the 5 per cent. and the half-transportation account, a sum which would be equal to the whole interest paid semi-annually by the Government.

Mr. ALLISON. And apply it now to payment?

Mr. WHYTE. Certainly, apply it now.

Mr. THURMAN. I beg to call the Senator's attention to what in my judgment, and in his I think, as a lawyer, is an insuperable obstacle to that proposition. So far as the 5 per cent. of net earnings and the half-transportation account, which under existing law are applicable annually, to use the very language of the act, to reimburse the Government the interest which it pays are concerned, there is no difficulty whatsoever; but to take a further sum and apply that presently to the payment of the interest of the debt due to the Government, would be to make the bill obnoxious to the charge that we are requiring money from these companies before it is due.

Mr. BLAINE. Why cannot Congress alter the law in that respect?

Mr. THURMAN. Does the Senator mean that we shall alter the law and make the whole debt payable now?

Mr. BLAINE. Under the Senator's theory, where is the particular point at which the Senator from Ohio stops in his volition to alter the law? That is what I want to be instructed upon.

Mr. THURMAN. If the Senator needs instruction it is because he has not listened to me or anybody else who has spoken in favor of the bill of the Judiciary Committee.

Mr. BLAINE. I have listened with a great deal of interest.

Mr. THURMAN. If we had the power, I for one would not be willing to exercise it; but we have never asserted the power to make that which is payable thirty years hence, or now twenty years hence, payable to day. We have never asserted any such power yet, and I do not think we ever shall.

Mr. CONKLING. May I ask a question of the Senator?

Mr. THURMAN. I want to answer the Senator from Maryland, and I hope the Senator from New York will wait until I get through with that.

Mr. CONKLING. The Senator, I know, is so competent to answer that he will not object.

Mr. THURMAN. I know the Senator from New York has a way of making speeches in the middle of other peoples' speeches. I think I am the best tempered man in the world, and I am always willing to allow him to inject one of his speeches into mine, because it ornaments it very much; it gives it a beautiful halo.

Mr. CONKLING. The Senator cannot wonder that I wish to associate my name with his speech whenever he makes one, and then he should not refuse me. I was going to ask him this question, if he will allow me——

Mr. THURMAN. I believe I will not allow the Senator just now. Just sit down. I will allow him when I get through answering the Senator from Maryland.

There is still another reason why the Judiciary Committee bill is framed as it is. The Judiciary Committee bill does not take one dollar from the companies and apply it to the debt due to the Government or to other creditors which, under existing law, is not so applicable. The sinking fund is composed entirely of money which is not, under existing law, applicable to the payment of the Government claim. That being the case, that sinking fund, as my friend from Maryland, who is so good a lawyer, well knows, ought to be held sacred for the security of the claims against the companies in the order of their priority, so that the fund may be ultimately distributed, precisely as a chancellor marshals the assets of a corporation or of an individual and divides them among the creditors. That is the theory of our bill. Two sums, the half-transportation account, which under existing law is to be paid to the companies and not to be retained by the United States, and an additional sum in money, constitute the sinking fund under the Judiciary Committee bill, and that with its accumulations is to be ultimately distributed among the creditors of the companies, the United States included, exactly as a chancellor would distribute them according to the legal and equitable priority of the creditors.

Mr. CHAFFEE. Before the Senator sits down I should like to ask him one question. Does he mean to apply this sinking fund to the junior creditors?

Mr. THURMAN. I will tell the Senator if these companies should be so honest as to pay off their first creditors so that they would have no claim on the sinking fund, and if they should be so honest as to pay off the Government of the United States so that it would have no claim, then this sinking fund would cover the very next lien-holder and be paid to him, and so on to the end of the chapter.

Mr. CHAFFEE. But is it not *pro rata* in the Senator's bill?

Mr. THURMAN. If there is enough to pay off the whole of one class of lien-holders who have priority, the sinking fund must be applied to pay them all. If it is not enough to pay off all of them, then it must be applied *pro rata;* in other words, you are to use it just as a chancellor would.

Mr. WHYTE. I would ask the Senator from Ohio, as he speaks about our not applying this money immediately to the payment of the debt, whether or not he has any doubt that when these bonds were originally ordered by Congress to be delivered to these companies,

Congress expected the interest to be paid as it matured; and whether it was not because of an omission in the law that that was not decided by the Supreme Court of the United States to be the true construction of the agreement between the parties?

Mr. THURMAN. I am glad my friend from Maryland asked me that question.

Mr. BLAINE. Mr. President——

Mr. THURMAN. I can only answer one question at a time.

Mr. BLAINE. I beg pardon.

Mr. THURMAN. And I cannot answer that as long as everybody else is talking. The Senator asks me whether I do not believe that when the act of 1862 and the act of 1864 were passed Congress expected that the companies would reimburse annually the Government outlay by a payment in discharging the interest on the subsidy bonds. Now I cannot answer that question except by the law. I know of no other way of getting at it.

Mr. SARGENT. We can change the law, you say.

Mr. WHYTE. Yes, that is the very point. I did not ask for a judicial opinion. The Supreme Court gave us that. I ask for a legislative opinion, whether we as legislators can now change this law to conform to the original intention of the Government.

Mr. THURMAN. If I were to undertake that, how would I get at it? I cannot issue subpœnas and call up all those who voted for the bill and make them testify what was their opinion, what was their intent, what they expected. A great many of them have gone to

> The undiscovered country, from whose bourn
> No traveler returns,

and among them some of the most prominent who were engaged in this business. I cannot do that. If I turn to the debates I am in inextricable confusion, for I find that there was one at least, and I do not know but more than one, in the House of Representatives among those who voted for this bill and for this subsidy who said they never expected the Government to get a dollar of it back; that they never expected to get a dollar of either principal or interest back; that it was all a sham and a humbug; that the Government could well afford to give all that money and more to have the building of the road, and that as for themselves they never expected a dollar of it to be paid back. I do not attach any importance to that. I do not believe, because one or two members may have said such was the intention, that it shows what was the intention of the House of Representatives. The intention of the House of Representatives is conclusively proved, the intention of Congress is conclusively established, by what Congress enacted into law. If Congress did not intend that this money was to be repaid to the Government there would have been no enactment for its repayment. If Congress did intend that the interest should be repaid annually to the Government or that the companies should themselves pay the interest on the subsidy bonds without any intervention on the part of the Government, the legal presumption is that Congress would have said so. Not having said so, I am obliged to take the law upon its face, and, taking it upon its face, I am obliged to say that Congress did not intend that the money should be paid any faster than Congress in the act has declared.

Mr. JOHNSTON and Mr. BLAINE addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Virginia yield to the Senator from Maine?

Mr. BLAINE. I simply wish to ask a question of the Senator from Ohio.

Mr. JOHNSTON. I only desire to take the floor on this bill for to-morrow.

Mr. BLAINE. I will yield in a moment. If the Senator from Virginia will allow me, I want to ask the Senator from Ohio a question to solve an honest doubt which came into my mind and which was suggested by a question of the Senator from Maryland. The Senator from Ohio some years ago, in 1871, took the ground that half of the Government transportation was undoubtedly payable to the railway companies. Two years later he took the ground that it would be well and wise to submit that question to the Supreme Court.

Mr. THURMAN. I took that ground from the very first.

Mr. BLAINE. Well, the Senator voted in 1871 to make it payable, and in 1873 the question came up and then he voted to let them have it decided in the courts.

Mr. THURMAN. I do not know whether I voted for that at all. I do not remember whether I was in the Senate when the act of 1873 was passed.

Mr. BLAINE. The Senator spoke in favor of it anyway.

Mr. THURMAN. I do not think I said a word about it. I was always in favor of the court deciding it.

Mr. BLAINE. That does not make the point. I think, however, the Senator did so vote. The court then decided that the half transportation was undoubtedly payable to the companies.

Mr. THURMAN. As the law then stood.

Mr. BLAINE. As the law then stood. The court has also decided that as the law now stands the interest is not payable until the bonds mature.

Mr. THURMAN. Oh! no; the half transportation and the 5 per cent.

Mr. BLAINE. They have so decided, I say. Now the Senator comes in with a bill declaring that the half transportation which the court decided was payable to the companies shall not be paid to the companies under the prior law. Then by the same power why not say that the interest which the court decided is not payable until 1900 shall be payable presently? Do I understand the Senator to say we can do that?

Mr. THURMAN. When the Senator gets through I will answer him.

Mr. BLAINE. I will take the answer now.

Mr. THURMAN. I say that, under the reserved power to alter, amend, or repeal, we can say that that half transportation which by the act of 1864 is to be paid to the companies shall be paid into a sinking fund instead of being paid directly over to the companies. We do not in that way advance the debt of the companies to the Government one day or one minute. We simply provide that in regard to a certain sum, this half transportation, instead of the Government paying it to the companies and then requiring them to pay it back in a gross sum, which would be absurd, the Government shall retain that half transportation account and turn it into a sinking fund and the company shall pay so much additional; that is all.

Well, now, let us see in regard to this half transportation. How comes the provision that the half transportation should be paid to the companies? It was not in the original act. By the original act the whole transportation account was to go to the credit of the companies annually, and the Government to get the benefit of it annually, to reimburse its annual payments of interest; and if there was anything over it was to go to the principal of the bonds. That is the act of

1862; but the act of 1864 relinquished our right to apply the whole of the transportation account to the payment of the interest as we paid it, and said that we would only apply one-half, and the other half we would pay over to the companies. That is in the act of 1864, and that act contains words which are as broad as the English language will admit that Congress shall have the power to add to, alter, amend, or repeal this act; and those who have undertaken to restrict it have only undertaken to restrict it to the act of 1864, and have said that that broad power of amendment or repeal only applied to that act. If that were so the provision that the half-transportation account shall be paid over to the companies annually instead of being paid to the Government, as it formerly was, is in this very act of 1864, which the Government has thus reserved the right, without limitation, to alter, add to, amend, or repeal.

Mr. BLAINE. The Senator still travels over a great deal of ground not covered by my question. Where does the Senator limit that power?

Mr. THURMAN. The power of alteration, amendment, or repeal? Well, Mr. President, I must be a very uninteresting speaker to speak on this question so often and not make myself understood on that point.

Mr. BLAINE. Why can you not by parity of reasoning——

Mr. THURMAN. If any one will give me the report of the Committee on the Judiciary on this bill, I will answer the question.

Mr. BLAINE. I have read that report.

Mr. THURMAN. I want to answer it in the language of the Supreme Court of the United States.

Mr. BLAINE. I thought the Supreme Court of the United States was only deciding the law as it then was.

Mr. THURMAN. The question which the Senator asks me is really what is the effect of a reservation of the right to alter, amend, or repeal.

Mr. BLAINE. That is not my question.

Mr. THURMAN. What is it?

Mr. BLAINE. The Senator entertains no doubt whatever in setting aside the decision of the Supreme Court in regard to the half transportation and with regard to annual income.

Mr. THURMAN. I do not set aside the decision.

Mr. BLAINE. Instead of paying, you retain the half transportation.

Mr. THURMAN. I do not set aside the decision at all.

Mr. BLAINE. You refuse to pay that which the court say is payable.

Mr. THURMAN. There is not one word in the decision of the Supreme Court that touches the question of the right of Congress to alter, amend, or repeal.

Mr. BLAINE. No; but did not the Supreme Court say the half transportation should be paid to the companies?

Mr. THURMAN. Yes.

Mr. BLAINE. This act says it shall not be paid to the companies, but it shall be retained.

Mr. THURMAN. Let us see how that matter is. If this bill said that the half-transportation account that has heretofore accrued before the decision made by the Supreme Court should, contrary to that decision, be seized upon, there might be some foundation for the Senator.

Mr. BLAINE. I am not speaking on that.

Mr. THURMAN. But there is not a word in the decision of the Supreme Court that conflicts with this bill of the Judiciary Committee, not one word in it which militates against the idea that Congress may by an alteration of the law require that that half transportation shall be paid.

Mr. BLAINE. Still the Senator does not come to the point. Why is it not in the power of Congress to make, as the Senator from Maryland asks, the interest, which is decided not to be due until 1900, payable presently, if Congress so chooses?

Mr. THURMAN. If I cannot get the Senator from Maine——

Mr. BLAINE. The Senator has not got to the point. He has said a great deal about things which I did not ask for, but he has not answered what I did ask.

Mr. THURMAN. State it again, and I will try to answer.

Mr. BLAINE. The Senator asserts the power to be absolutely unlimited to alter, amend, or repeal these acts. The Supreme Court having decided that the interest due under the act of 1864 is not payable until the maturity of the bonds, what, under the Senator's theory, hinders Congress from declaring that from this day forward it shall be paid presently when it falls due, and not wait until the maturity of the mortgage?

Mr. THURMAN. Now, if the Senator will take his seat——

Mr. BLAINE. I can listen standing.

Mr. THURMAN. Very well. I answered that question a while ago perfectly well. I said then that nobody had asserted the power to make a debt which was not due until twenty years hence, due to-day.

Mr. BLAINE. Then the Senator——

Mr. THURMAN. Let me proceed, because I wish to answer the question. But I said further that if we had the power, nobody was disposed to assert it. That is exactly what I said before, and that the requisition to put so much money into a sinking fund is no assertion of any such power at all. It does not advance the payment of the debt which is due to the United States one day.

And now I wish to say, in answer to the question of the Senator from Maine, and in answer to a world of words that have been uttered in this debate, that I am not going to set up men of straw to knock down, nor am I going to answer arguments against men of straw that have been set up in order to be knocked down by those who set them up. I am not going to trouble the Senate with much question about how far the power of amendment, alteration, or repeal goes. Whether it goes to impairing the obligation of a contract or not, it is sufficient for me that there is not one word in this bill that impairs the obligation of any contract, and that all talk about impairing the obligation of contracts from the beginning of this debate to the end of it has been as foreign to the bill as would be a discussion of where is the North Pole or of the transit of Venus.

Mr. EATON. You are entirely wrong on that, and I can show it.

Mr. THURMAN. If my friend will interrupt me in a senatorial way by rising and stating his position, very well. I have certainly a very different opinion from him. He asserts his and I assert mine. Whenever he or anybody else shall show me that this bill is the thousandth part of a hair the violation or impairment of a contract, then I will try to show authorities to do it, but I will not argue a question which is not before the Senate.

As to the power of amendment, alteration, or repeal which it is sought to fritter away and make nothing, this power, so important that it has been put by constitutional enactment into the constitu-

tions of three-fourths of the States for the very purpose of giving the Legislature control over these creations, so that the Government should be their master, and not they the masters of the Government, this power that has been of so much importance that it has been struggled for for thirty years, and put into every new constitution that has been formed within that time, is now frittered away to nothing, made absolutely useless, made a mere abuse of words and terms, made to be nothing but the right to alter, amend, or repeal for the benefit of the corporations, instead of to retain control over them. When the time comes I may have something to say upon the extent and proper effect of that power. I, however, for the present need only stand on the truest, most concise, and most comprehensive definition of that power that has ever yet been spoken by man, the decision of the Supreme Court of the United States in the case of Tomlinson. Gentlemen seem to be horrified about the idea of a violation of contract, as if it was any violation of a contract, forsooth, for the Legislature to alter or amend a charter when it had reserved the right to alter or amend it. My friend from Georgia the other day said, "Why, you cannot reserve a right to alter or amend a contract," as I understood him, because——

Mr. HILL. I never said you could not reserve the right to alter or amend the charter of a corporation or the right to regulate and control the exercise of its franchises and privileges; but I did say that the contract of loan was not a franchise and was not included in those grants to corporations.

Mr. THURMAN. I have heard my friend explain it at least a dozen times.

Mr. HILL. You do not seem to understand it, notwithstanding.

Mr. THURMAN. Just let us see how that is. Why can you not do it in regard to the loan? I agree that you cannot do it in regard to the loan——

Mr. HILL. Very well.

Mr. THURMAN. Or at least it is doubtful whether you can do it in regard to the loan; but upon what ground does the Senator put it? That the loan is a contract? Is not that it? And he says that Congress has no original power to impair the obligation of a contract; *ergo*, Congress cannot get by a reservation in a charter a power it does not originally possess—I think I state the Senator's argument fairly—that Congress has no original power to impair the obligation of a contract and it cannot obtain by a reservation in a charter or any law that it may pass a right to do that which it has not original constitutional power to do.

Mr. HILL. Now, if my friend will bear with me, I have endeavored to explain the distinction between a grant, a voluntary grant by a grantor, and a contract for a consideration. The charter is granted by the Government as a prerogative power, freely granted, of favor. It has no consideration but the public good. In the charter there is a grantor and a grantee. In the contract of loan the consideration is different, in this: in a charter there is no valuable consideration passing from the grantee to the grantor, but in a loan there is a valuable consideration, and it rests wholly on a different footing. I showed that under the English law and the American law a voluntary grantor, even a private voluntary conveyancer, can convey with any condition he pleases, can reserve any right he pleases; and it is proper that the legislative power, which is exercising simply the prerogative of granting corporate franchises, should reserve the power to control them and secure the end for which they were intended;

that is, the public good; but a contract of loan is not a grant; it is an agreement. It is not a grant for favor; it is not a grant for the public good; it is an agreement for a valuable consideration.

That is what I say, and I say further that when the Government made a contract with this corporation to lend it money, and the obligation of the company was to repay that money, and the consideration was a money consideration, that stands upon a wholly different footing. One is a grant by the sovereign power, and the other is an agreement for value. Every grant, it is true, is in one sense a contract; but every contract is not a grant; and there is the difference. I challenge the gentleman to show any case on earth where it was ever held that this reservation of the right to alter, amend, or repeal, was ever applied to anything but a franchise, and that upon the distinct ground that that is a grant and not an agreement. It is a contract in one sense, it is true, but not a contract in the sense that it is for a valuable consideration. An agreement must have the assent of both parties, and the terms are agreed to by both parties, and the obligation is to repay.

The Senator refers to the Constitution and the statutes. I say here, and I challenge him to show to the contrary, that every constitution and every statute, general or special, in which this power to alter, amend, or repeal is reserved, relates solely to a corporation and to the franchises proper of a corporation, and he cannot show a case on record where there was ever a power reserved to alter or amend a contract founded in a valuable consideration for the loan of money; and that is the distinction.

Now, sir, having disposed of that question, I want to put one more to the Senator from Ohio.

Mr. BLAINE. One moment. My question is all lost sight of. [Laughter.] The Senator from Ohio did not answer it. He went off into a long argument and did not touch it, and that provokes another argument from the Senator from Georgia who does not touch it. The Senator from Ohio simply says I am erecting a man of straw and he does not propose to fight him. That is a very convenient way of avoiding to answer a question which it is not entirely agreeable to answer. But still the Senator from Ohio has not answered, I think, to the satisfaction of the Senate, I trust it may be to his own satisfaction, at what point under his construction the power to alter, amend, or repeal stops. It ceases when you strike the point of making the interest payable now that the Supreme Court has decided is payable twenty years to come.

Mr. THURMAN. I will not argue hypothetical cases. As I have told the Senator, life is too short for that. The Senator has many more long years of usefulness than I have. Life is too short for me to stand up here as if we were in one of those schools of dialectics in the middle centuries to answer all questions, challenge all comers to put any question and answer it. I am no Admirable Crichton to stand up and be catechised in that way, but a plain, practical man who does his duty sufficiently when he defends a measure he reports to the Senate and leaves other measures and questions to wait their coming up.

Now, Mr. President, I could put a question, too, but I do not want to interrupt what I have got started on very unexpectedly, for I did not expect to say a word on this subject to-night and should not but for this scattering fire. When the time comes—I do not ask him to do it now—I want the Senator from Maine to answer this question: whether he denies the right of Congress to compel these companies to provide a sinking fund. I will give him until to-morrow to think over that.

Now, Mr. President, one word to my friend from Georgia. The point started by the Senator from Georgia must be an exceedingly favorite thing with him, because he has presented it to the Senate I think at least six or eight times.

Mr. HILL. Still you will not get it right.

Mr. THURMAN. Whenever you try to state it right the Senator overwhelms you with words, with distinctions, and the like. I stated this proposition and I appeal to the whole Senate if I did not state it fairly. The Senator said you cannot reserve a right to alter, amend, or repeal a contract; that reservation is good for nothing because you cannot obtain, by reserving, that which you do not possess under the Constitution. To use his own language, you must have that as an original power; that is, a power under the Constitution, or you cannot possess it at all; and to use an illustration, a reservation of that power would be of no more value than would be a reservation of a power to take private property for public use without just compensation or a reservation of power that Congress might commit murder. That is the Senator's argument. The answer to it is complete in this: that where that reservation exists in a charter it is a part of the contract itself, and you never do impair the obligation of the contract by exercising that power. It is not, therefore, a reservation of a power to impair a contract; it is a reservation of a power which prevents your law from being the impairment of a contract. That is a complete answer. If the Senator's argument were true you could not amend the franchise, you could not alter the franchise. Is not a grant of corporate franchise, when accepted by the corporators, a contract? Was not that the very foundation of the Dartmouth College case? Has not every decision since been to the same effect? Must not a charter be accepted before it becomes effectual, and when it is accepted is it not a contract, ay, a contract in regard to every franchise in it? For instance, take these very charters; what authorizes these chartered companies to take tolls? The right to take tolls is a royal prerogative. It is granted to these companies.

Mr. HILL. I ask the Senator——

Mr. THURMAN. No; let me proceed: I do not wish to be interrupted now. The right to take tolls is a franchise; it is granted, and the charter is accepted. That is a contract that they shall take the tolls; and if there is no reservation of the power to alter that either in the Constitution of the country or in the charter itself and it is a State charter, you cannot take that away from them, because that would impair the obligation of the contract. You cannot lessen the tolls, you cannot reduce the tolls, if it is in the charter and comes within the provision of the Constitution of the United States where there is no reserved right to alter, amend, or repeal, and nothing in the constitution or laws of the State which gives the right to alter and amend the law. That right to take toll is a part of the contract; you cannot touch it. But does anybody deny, can anybody deny that where the right to alter, amend, or repeal exists, then the Legislature may reduce the amount of tolls which the company otherwise would be entitled to take?

The Supreme Court has decided it at this very session, since we have been talking on this bill, in a case from my own State where the Legislature of the State, under its right to alter, amend, or repeal, reduced the tolls that a railroad company might take more than one-third. Now if the Senator goes upon the theory that Congress has no power to alter or amend the contract whatsoever, and therefore that to reserve that right is perfectly ineffectual, then he must go the whole length and say you cannot touch one single one of the

franchises of this corporation. A complete answer to him, as I said before, is that there is no impairment of the contract, that the power reserved prevents there being any impairment of the contract at all.

I hardly think it necessary to go further, though while I am on this subject I may as well say a word more, as I shall not refer to it again, as the Senate seems to be in a good humor although it is nearly dinner-time. I will say a word upon the idea of the Senator from Georgia that there was some third party intervening here which made this loan somewhat different from the other charter privileges. I submit that the contract of loan is in the charter and in the acceptance by the companies. If I were to agree to a written contract with my friend from Georgia——

Mr. HILL. Do you hold that the contract of loan is one of the franchises granted by the act?

Mr. THURMAN. Never mind whether it is a franchise or not; I say that is a part of the contract. If my friend from Georgia and I were to sit down and write out a contract and both sign it, and by that contract I should agree that if he would build a house within thirty days and my agent, Senator EATON, should say that it was built according to the terms of the contract, then and in that case EATON, as my attorney in fact should deliver to him my negotiable note for a thousand dollars in payment for that house, payable at ninety days, or ninety years, I do not care which, I should say that the contract rested in the paper that he and I had signed and not at all in anything that EATON did in the business; and I should say here that when the United States said to these companies, "If you will build so much road we will lend you so much money, and our servant, the Secretary of the Treasury, shall issue our bonds for the money," and when the company accepted that charter, it had a contract right to those bonds if it performed the conditions—that is, if it built the road; and I should say that when it built so much of the road as entitled it to a certain amount of the bonds it was the duty of the President of the United States to ascertain the fact, and it is to be presumed he would do it honestly, and having ascertained the fact then it was a positive duty—not a discretionary duty but a positive duty—to issue the bonds of the Government, and I should say that all that grew out of the contract the Government had made, that it would issue the bonds if the conditions were performed.

Mr. President, now to come to what I said I would quote, the language of the Supreme Court of the United States upon this subject.

Mr. HILL. Will the Senator allow me? I do not want to overwhelm him with words——

Mr. THURMAN. No; I just wish to say this and I will sit down, and then the Senator may take all night if he chooses, and I should be very glad to sit this bill out to-night if I could. Your committee say:

> What, then, is the power thus reserved, that is to say, the general power to alter amend, or repeal the charter?
>
> It was defined by the Supreme Court of the United States in the case of Tomlinson *vs.* Jessup, (15 Wallace, 458.)

And now I pray the attention of the Senate to this language of the Supreme Court:

> The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed—

That is, any change in the charter, for in that case the charter was the contract——

> or as subsequently modified.

Which is an answer to what the Senator from Georgia said the other day that when we passed the act of 1871 that exhausted the power of amendment. The Supreme Court did not think so:

The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders took their interests with knowledge of the existence of this power and of the possibility of its exercise at any time in the discretion of the Legislature.

And this puts it all upon the true ground and the only true ground which makes that reservation worth the paper on which it is printed or written. Now, further:

The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference.

I stop there to say out of my own mouth that the Legislature is the judge of the occasion, and that no court can review its decision as to whether the public interest requires it or not. The court go on:

It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation.

But with that provision it is repealable and subject to legislation which does affect its obligation.

Mr. President, it will be a sad day in the jurisprudence of this country when these words so industriously put into charters, when these words so industriously put into constitutions, shall come to have no meaning at all. It is in vain that the people for thirty years have been struggling to retain that control over their creatures, that control over their contracts which the Supreme Court has said this reservation does secure to them, if it is all to be frittered away and to amount to nothing at all.

Mr. HOWE. I move that the Senate do now adjourn.

Mr. HILL. Just five minutes.

Mr. HOWE. Will you renew the motion?

Mr. HILL. I will renew the motion.

Mr. HOWE. It is a bargain.

Mr. HILL. I desire the attention of the Senate a moment on the point between the Senator from Ohio and myself, and I will endeavor to be a man of as few words as he himself, and he is most distinguished for being a man of few words.

The distinction I draw and insist on is the distinction between a contract which is the corporation contract, that is, the contract that creates the corporation and clothes it with franchises and which is a grant by the State, and a contract subsequently for a consideration and which is not a franchise. That is the difference. No case better illustrates the distinction—I want to call the attention of the Senator from Ohio to it—than the very case to which he has alluded, and that is the case of Miller *vs.* The State, and, as that case is exactly in point and I rest upon it the distinction I make, I call the attention of the Senate to it for a moment. What was that case? The Legislature of New York chartered a railroad company and there was a provision in the railroad charter which authorized the city of Rochester, which subscribed $300,000, I think, of stock, to have four of the directors and the other stockholders to have seven or nine. The city of Rochester subscribed $300,000 of stock. It was expected that the miscellaneous stockholders would subscribe much more, and that the road as chartered would be built a good long distance. The city of Rochester paid her $300,000 that she subscribed and was allowed four directors

in the board. The other stockholders were allowed either seven or nine; but instead of paying the whole amount that the private stockholders subscribed they paid a less amount than the $300,000.

The original idea of the charter was to give the city of Rochester and the other stockholders power in the board of directors in proportion to their subscription to the stock. As the other stockholders did not subscribe the amount that they had agreed to subscribe, and as the stock paid in by the city of Rochester exceeded all the stock paid in by the others, there was an injustice in this, that a minority of the stockholders controlled the board of directors. Therefore the Legislature of New York, under the general power given in their constitution, and by general legislation also, to alter, repeal, or change at will corporate charters, passed an amendatory act by which they gave to the city of Rochester an additional number of directors in the board and lessened the number of directors to which the other stockholders were entitled. The other stockholders objected to that amendment, and they said that the original article included in the charter allowing the city of Rochester four directors and giving the other stockholders seven or nine was a contract and that the city of Rochester was therefore bound by it. The city of Rochester insisted that it was part of the franchise and that therefore the Legislature had a right to make the amendment and give her the increase in the power of directors by legislative act and reduce the number of directors to which the other stockholders were entitled according to the original intent.

What was the question before the court—and I challenge the attention of the Senator from Ohio to it—and what was the decision made by the Supreme Court of the United States, for it finally came to this court? The supreme court of New York and I believe the court of appeals both held that it was a contract, not a franchise, that was made with the city of Rochester; that it was a contract not with the city, but a contract between the city of Rochester and the other stockholders, and that therefore the amendatory act was void because it violated a contract. That was the way the State courts held. That case was brought, if my recollection is right, to the Supreme Court of the United States, and it is reported in 15 Wallace, the case of Miller *vs.* The State. I think the State courts of New York decided as I say, but I shall not be sure about that, but it makes no difference now. The case was brought to the Supreme Court of the United States, and what was the question there? The question was whether this provision in the charter giving the city of Rochester four directors, and the other stockholders seven or nine, was such a contract, independent and separate from the franchise, as that the Legislature under that reservation could not change it. That was the only question. The whole court agreed that if it was a contract separate and independent from the charter, although included in the charter, if it was in its nature a separate contract and not a franchise and not a part of the franchise, the Legislature had no power to alter it; and the Supreme Court divided on that question. A majority of the Supreme Court held that it was a part of the franchise, that the arrangement between the city of Rochester and the other stockholders was a part of the corporate franchise from the Legislature, and, therefore, the amendatory act changing it was constitutional. Judge Field and Judge Bradley dissented from that opinion because, they said, in their judgment it was a contract separate and independent from the franchise, and was not a part of the franchise. But I repeat, sir, although that was included as a provision in the charter, there

was not a judge on the bench who intimated once that if that arrangement with the city of Rochester was a contract separate and independent from the franchise the Legislature could interfere with it, and they decided that the Legislature could interfere solely because it was a part of the franchise and corporate privilege granted.

Mr. BAILEY. Did they decide that the Legislature could not have interfered if it had been a separate grant?

Mr. HILL. They decided that the Legislature could interfere because it was a part of the franchise. Of course it was not necessary to say the Legislature could interfere if it had not been a part of the franchise. The dissenting judges put their dissent solely on the ground that they differed with the court in saying that it was a part of the franchise. They said it was a contract separate from the franchise, though included in the charter; and therefore being a contract separate from the franchise, though included in the charter, the Legislature had no power to alter it, and that is what I insist here, that though this contract of loan is included in the charter, it is a contract that is separate from the franchise; it is not a part of the franchise; it is an independent contract which could have been as well made by a separate and independent bill as in the original bill; and therefore not being a part of the corporate franchise it was not within the power reserved to alter, amend, or repeal.

Mr. KERNAN. The Senator I think is wrong in saying that the court of appeals of New York held that law unconstitutional.

Mr. HILL. I said I might be mistaken about the decision of the court of appeals of New York.

Mr. KERNAN. They affirmed the right of the city to elect directors under the new law.

Mr. HILL. I do not remember what was the decision of the various courts of New York. I do not know whether they all maintained the constitutionality of the act or denied it. The question was brought to the Supreme Court of the United States, and I think the Senator from New York will bear me out that the whole question in that case was whether the arrangement with the city of Rochester was a part of the franchise or a contract separate from it.

Mr. KERNAN. I have not examined that point and cannot say. The Supreme Court of the United States affirmed the decision of the court of appeals of New York.

Mr. THURMAN. I want the Senator from Georgia to answer me a question. Suppose the Government never had loaned these companies a dollar, does the Senator deny that Congress could under its reserved power, if not in any other way, require these companies to provide a sinking fund for the benefit of their creditors?

Mr. HILL. I do.

Mr. THURMAN. You do?

Mr. HILL. Yes, I do beyond the provisions of the act; but I say it is not necessary for me to take that position here, for I say that Congress cannot under a general reservation require anything to be done which is inconsistent with the specific stipulations of the contract.

Mr. THURMAN. The Senator does not answer my question. It is, whether Congress would have the right, suppose there had been no Government loan at all, to require this corporation to provide a sinking fund for the protection of its creditors? I submit to the Senator from Georgia that that right cannot be destroyed because one of those creditors is the Government of the United States, no matter how the contract of loan was made.

Mr. HILL. In relation to the establishment of a
say this: as I understand the authorities, and sur
Ohio cannot disagree with me, that is a judicial ques
there is a stipulation in a mortgage that a sinking fund shall be p
vided the courts will order it; whenever there is no such stipulation in a mortgage, and the mortgageor is insolvent, and the property insufficient to pay the debts, the mortgageor becomes in default and then a sinking fund will be provided or even the rents, issues, and profits will be applied. That is a different question altogether. I want to confine the Senator to the question. I say here—you may say I repeat it; I do repeat it—there is not a decision on earth that ever has held that the legislative power could change a contract which was not a franchise, a contract based on a valuable consideration. A franchise is not based on valuable consideration. The very decision the Senator read speaks of the importance of the Legislature that grants franchises retaining power over them to promote the public good. Why? Because the very object of granting a franchise is to promote the public good; the franchise is voluntary; and, of course, the Legislature having power to grant the franchise, and granting that franchise voluntarily, has a right to grant it on terms and prescribe just such terms as it pleases. There is no doubt about that.

Mr. KERNAN. Will the Senator allow me to get information by putting a question? Suppose a State passes a charter authorizing a corporation to be formed, and providing that on its being formed and putting up certain securities for the protection of policy-holders it may do a business of life insurance. They make this reservation in that charter. Suppose the Legislature becomes satisfied that the holders of the policies are not safe because the stockholders in the company do not put up enough security, could it not require them to put up more under that reservation?

Mr. HILL. Unquestionably.

Mr. KERNAN. There was not the only contract, "if you advance and put up with us"—as they do in New York—"certain securities, you may do the business for fifty years." In ten years we may say to them "you must put up as much more." Can the Legislature do it?

Mr. HILL. I say they can; but the distinction is very patent. The very franchise of an insurance company is to take risks and make the policy-holders secure, and it is the duty of the Government that grants that franchise to see that the corporators carry out the original purpose. Now, the object of creating a corporation to build a railroad is to build and keep up a railroad.

Mr. THURMAN. And keep up its credit?

Mr. HILL. You gentlemen go on the idea——

Mr. KERNAN. If we say to a railroad company, "if you do certain things you shall have certain lands," or "we will loan you certain money," if that is put in the charter and they comply, may we not, on the same ground, if we find that they are becoming insolvent and not paying their debts, regulate their affairs so that they shall be able to pay?

Mr. HILL. Certainly not. The difference is just this: a railroad company is not incorporated for the purpose of paying its debts. That is not one of the objects of its creation.

Mr. THURMAN. Oh!

Mr. HILL. The particular object of a railroad company is to build a railroad and keep it up, and it may pay its debts or it may not pay its debts; but the courts will compel it to pay its debts, not the legislative power. If a railroad company fails to pay its debts and goes into

liquidation, that does not destroy the corporation. The railroad lives, the corporation is immortal. Gentlemen talk as though the peril of this debt was the peril of the road. By no means. The debt may fail to be collected and yet the road be kept up.

I admit that Congress has reserved power over the corporation. I admit that it has reserved power over the regulation of the franchises of the corporation. It can require the road to be kept up. It requires the purposes of the creation of the corporation to be carried out and secured; but the contract of loan is simply a contract debt, nothing more nor less, in which there is no franchise and to which the Government on the one part and the railroad company on the other are parties as simple contract debtors and creditors for a consideration of a loan and nothing more.

Now, sir, I move that the Senate adjourn.

The motion was agreed to; and (at six o'clock p. m.) the Senate adjourned.

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APRIL 5, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, the pending question being on the amendment submitted by Mr. CHAFFEE.

Mr. BAYARD. Mr. President, it is difficult to overrate the importance to the people of this country of a proper decision of the measure proposed by the Committee on the Judiciary, and that importance is the only excuse I shall offer for continuing the debate, which has been so thoroughly conducted on both sides of the question, yet I feel a responsibility attaching to the action of each member of the Senate in regard to so far-reaching and important a subject and from which he cannot divest himself.

The amount of money alone involved has been stated, and as I believe correctly, at simple interest will amount to the enormous sum of $120,000,000, or if subjected to the custom of merchants, and the rests in the calculation of interest were made that are common in the business transactions of this country, it would reach the mighty sum of $170,000,000 at the maturity of the bonds issued by the Government to these companies. I know that of late days the people of this country have had their ears accustomed to the repetition of sums, the force and meaning of which are but little comprehended. If the morality of a people is bound up, as I believe it to be, with a reasonable degree of prosperity, then I say that such enormous debts as have been so recklessly created, and are oftentimes so lightly discussed, are incompatible with that prosperity which is the necessary associate of political morality. It will be vain to sing pæans to public credit and to public honor, and disregard those practical rules of econ-

omy, of self-denial, of rigid observance of contracts, which are essential to their preservation.

But there is, even irrespective of this vast sum of money, a still greater, because it is a more continuing, question raised as to the legislative power of Congress, by way of amendment or repeal, to correct the errors or the impolicies of preceding legislation. In this case we find the question raised as to the power and duty of the Government of the United States toward two artificial persons, who have been placed in charge, for public purposes, of a vast amount of public property, to further a great public end, in the construction and maintenance of a continuous line of railways binding together the Pacific and Atlantic coasts of this continent. The creation of these railways was not simply for the development of the central portion of the continent, and to make a new route of commerce between Europe and Asia conducted through the United States; but there was a great political object, to strengthen the bands of union between distant portions of this great Republic, and to effectuate this, two acts of Congress were passed, one in 1862, and the other in 1864, amending and enlarging the means whereby this great work was to be accomplished through the agency of two corporations, one then created by Congress, and the other claiming existence under the laws of the State of California employed in co-operation, with extended and renewed powers beyond the scope of its original charter from the State of California.

Sir, this was called by the Supreme Court in the case in 1 Otto at page 81, "a national undertaking for national purposes," and "a national work originating in national necessity and requiring national assistance." To this end the credit of the people of the United States and their Government was loaned by scores of millions of dollars; the public lands, the property of the American people and the generations who are to succeed them, was granted on a scale and to an extent truly imperial. To whom did this vast property and dominion belong? It was wholly the property of the nation. Under whose control was this negotiation made? By the governmental agencies of the American people who had no jot or tittle of power to part with one acre of land or one dollar of money excepting for a public use.

There seems to me throughout this debate to have existed in the minds of some Senators a confusion, that whereas private property may at all times be taken for public use upon just compensation being rendered, the converse of the proposition is wholly untrue, and under no pretense can public property be justly taken for private use.

But, Mr. President, I do not propose to weary the Senate by repeating the history of these gigantic grants, or to criticise the spirit and means through which they were enacted into law. The time of their enactment was not favorable to serenity or calm judgment. The people of America were in the throes of a dreadful strife in which human passions and emotions were excited to the utmost for good or for evil, and the temper and tone of the hour extended itself in a great degree to their representatives in the Halls of Congress. It is to be expected that in times of great popular excitement a great deal will necessarily creep in that calm retrospection would disapprove, that calm inspection at the time would have excluded.

But, sir, we must not forget, in considering the proposition now before the Senate, the true origin and history of these undertakings, what was the paramount and continuing object of the creation of these corporations and their endowment, and learn, so far as we may, what has been their action in the past, in order that we may know

how to adjust our action to the probabilities of the future. It is therefore with the intent only of gaining light from the past history of the action of these corporations, that I propose to refer to an examination, thoroughly and carefully made by a responsible branch of the Government a few years since.

In 1873 a select committee of the House of Representatives was appointed under a resolution to make inquiry in relation to the affairs of the Union Pacific Railroad Company, the Credit Mobilier of America, and other matters specified in said resolution and in other resolutions referred to the committee; and they submitted their report on the 20th of February of that year, being No. 78 of the third session, Forty-second Congress.

At page 2 of the report I find so well stated the objects of the acts of 1862 and 1864 that I shall employ the language of the committee in preference to my own:

The purpose of the whole act was expressly declared to be "to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefit of the same for postal, military, and other purposes."

Your committee cannot doubt that it was the purpose of Congress in all this to provide for something more than a mere gift of so much land and a loan of so many bonds on the one side, and the construction and equipment of so many miles of railroad and telegraph on the other.

The United States was not a mere creditor, loaning a sum of money upon mortgage. The railroad corporation was not a mere contractor, bound to furnish a specified structure and nothing more. The law created a body politic and corporate, bound, as a trustee, so to manage this great public franchise and endowments that not only the security for the great debt due the United States should not be impaired, but so that there should be ample resources to perform its great public duties in time of commercial disaster and in time of war.

This act was not passed to further the personal interests of the corporators, nor for the advancement of commercial interests, nor for the convenience of the general public alone; but in addition to these the interests, present and future, of the Government, as such, were to be subserved. A great highway was to be created, the use of which for postal, military, and other purposes was to be secured to the Government "at all times," but particularly in time of war. Your committee deem it important to call especial attention to this declared object of this act, to accomplish which object the munificent grant of lands and loan of the Government credit was made. To make such a highway, and to have it ready at "all times," and "particularly in time of war," to meet the demands that might be made upon it; to be able to withstand the loss of business and other casualties incident to war and still to perform for the Government such reasonable service as might under such circumstances be demanded, required a strong solvent corporation, and when Congress expressed the object and granted the corporate powers to carry that object into execution, and aided the enterprise with subsidies of lands and bonds, the corporators in whom these powers were vested and under whose control these subsidies were placed were, in the opinion of your committee, under the highest moral, to say nothing of legal or equitable obligations, to use the utmost degree of good faith toward the Government in the exercise of the powers and disposition of the subsidies.

Congress relied for the performance of these great trusts by the corporators upon their sense of public duty; upon the fact that they were to deal with and protect a *large capital of their own which they were to pay in in money*; upon the presence of five directors appointed by the President especially to represent the public interests, who were to own no stock; one of whom should be a member of every committee, standing or special; upon commissioners to be appointed by the President, who should examine and report upon the work as it progressed; in certain cases upon the certificate of the chief engineer, to be made upon his professional honor; and lastly, *upon the reserved power to add to, alter, amend, or repeal the act.*

Here let me advert to the second section of the act of 1864, which provides—

That the Union Pacific Railroad Company shall cause books to be kept open to receive subscriptions to the capital stock of said company, (until the entire capital of $100,000,000 shall be subscribed,) at the general office of said company in the city of New York, and in each of the cities of Boston, Philadelphia, Baltimore,

Chicago, Cincinnati, and Saint Louis, at such places as may be designated by the President of the United States, and in such other localities as may be directed by him. No subscription for said stock shall be deemed valid unless the subscriber therefor shall, at the time of subscribing, pay or remit to the treasurer of the company an amount per share subscribed by him equal to the amount per share previously paid by the then existing stockholders. The said company shall make assessments upon its stockholders of not less than $5 per share, and at intervals of not exceeding six months from and after the passage of this act, *until the par value of all shares subscribed shall be fully paid; and money only shall be receivable for any such assessment, or as equivalents for any portion of the capital stock hereinbefore authorized.*

This important fact is emphasized by the learned judge who delivered the opinion of the court in The United States *vs.* The Pacific Railroad Company, 1 Otto, who, in considering the mutual rights and duties of the company and of the United States Government, at page 81, says:

The policy of the country, to say nothing of the supposed want of constitutional power, stood in the way of the United States taking the work into its own hands. Even if this were not so reasons of economy suggested that it were better *to enlist private capital* and enterprise in the project by offering the requisite inducements. *Congress undertook to do this* in order to promote the construction and operation of a work deemed essential to the security of great public interests.

Here was a comprehensive statement of the purview with which this undertaking was commenced, not only its objects but the means whereby they were to be attained. How has this company executed its part of this undertaking? I shall let the committee speak in their own forcible language, and will here give their names, well known to the country for intelligence and character—one of whom, Mr. Shellabarger, of Ohio, will be hereafter cited by me, as he now appears professionally engaged in opposition to the plan proposed by the Judiciary Committee to protect the company against insolvency. The members who signed this report were J. M. Wilson, of Iowa; Samuel Shellabarger, of Ohio; GEORGE F. HOAR, of Massachusetts; THOMAS SWANN, of Maryland, and Henry W. Slocum, of New York. At page 3:

Your committee find themselves constrained to report that the moneys borrowed by the corporation, under a power given them, only to meet the necessities of the construction and endowment of the road, have been distributed in dividends among the corporators; that the stock was issued, not to men who paid for it at par in money, but who paid for it at not more than thirty cents on the dollar in road-making; that of the Government directors some of them have neglected their duties and others have been interested in the transactions by which the provisions of the organic law have been evaded; that at least one of the commissioners appointed by the President has been directly bribed to betray his trust by the gift of $25,000; that the chief engineer of the road was largely interested in the contracts for its construction; and that there has been an attempt to prevent the exercise of the reserved power in Congress by inducing influential members of Congress to become interested in the profits of the transaction.

And at page 19, in reference to the provision that *nothing but money* should be paid for the capital stock—and paid in full:

In this case the provision of the charter requiring the stock to be paid for in money has been grossly violated; because, as is apparent, nearly the whole of the stock that has been issued represents no value to the railroad company; or, to state it differently, was issued without any consideration whatsoever.

At page 21 they say:

The statute requiring the capital stock to be paid for in money at par, it has in fact been paid at not exceeding thirty cents on the dollar in road-building, excepting, perhaps, the sum of about $400,000.

Why, Mr. President, this "road-building" was more than one-half clear profit. To speak more properly that stock was not paid for building the road; it was gratuitously issued as profits to those who contracted to build it. And who contracted to build it? At page 9

of this report the testimony of Mr. J. M. S. Williams, who was one of the contractors, is given:

Question. Then what purpose had you to propose to build a road that had already been built by the company at a cost to them of less than the amount mentioned in your proposition?

Answer. We were identical in interest. The Credit Mobilier and the Union Pacific Railroad Company were the same identical parties. *We were building it for ourselves, by ourselves, and among ourselves. There was not* $20,000 *outside interest in it.*

Mr. President, I do not propose to repeat the sad and shocking history of that Credit Mobilier corporation and its complete identification with the Union Pacific Railroad Company. It is a stain, that will never be wiped out, upon republican institutions. It is something for which conscientious men who, from patriotic motives voted to enact these laws of 1862 and 1864, must ever feel themselves responsible to the people of this country that so much of money the result of human toil was poured into a gulf of riotous corruption and ruinous results. Contracting with themselves, the very corporators, the trustees into whose hands this property of the American people had been so generously given in the sacred trust and confidence that they would use it honestly and only for the great public ends, and in the manner prescribed by the acts of Congress, how did they use it? Availing themselves of this creation of the law by which a mere corporate title shall stand instead of a real person, they dealt with themselves. They dictated their own profits, they sold out the powers for their own aggrandizement that were intrusted to them so generously, so munificently, for the benefit of their fellow-countrymen and succeeding generations.

At page 14 of the report is a short table which I will read, showing the cost to the railroad company of three contracts, and the real cost to the contractors for doing the work; that is to say, the cost that the corporators, directors and officers, knowingly paid to themselves and their associates by way of profit:

| | | |
|---|---|---|
| COST TO RAILROAD COMPANY. | | |
| Hoxie contract | | $12,974,416 24 |
| Ames contract | | 57,140,102 94 |
| Davis contract | | 23,431,768 10 |
| Total | | 93,546,287 28 |
| COST TO CONTRACTORS. | | |
| Hoxie contract | $7,806,183 33 | |
| Ames contract | 27,285,141 99 | |
| Davis contract | 15,629,633 02 | |
| | | 50,720,958 34 |
| | | 42,825,328 34 |
| To this should be added amount paid Credit Mobilier on account of fifty-eight miles | | 1,104,000 00 |
| Total profit on construction | | 43,929,328 34 |

There are other tables here, showing the dividends in stock made by this company to these "contractors" in the Credit Mobilier under the pretense of paying them. I find at page 14 of the report, one Mr. Ham, one of the accountants and experts, explained how upon the balance sheet the aggregate profit of the Ames and Davis contracts was $37,657,095.43. He was asked how much of it was money, how much bonds, and how much stock. He gave an exhibit, in which $24,000,000 of stock of the Union Pacific Railroad Company was paid as profit to "contractors" by themselves. At page 24 the committee say, after repeating again the cost of the road:

But we think the corporation and the United States sustain the relation of trustee and *cestui que trust*. The United States have placed in the hands of the corpora-

tion large properties to be managed for a public purpose, for which management the corporators are to be compensated by the gains lawfully made in the employment.

* * * * * * *

The committee do not doubt that the proceeds of these lands and bonds, as well as of the first-mortgage bonds which the Government has provided to secure by a lien prior to its own, are held as an express trust by this company, and applicable alone to said declared purposes of the acts. Any distribution of the proceeds of either of these funds as profits or dividends to stockholders is illegal as violative of the declared purposes of the trust.

We have, then, the case of a corporation which is a trustee, in the management of persons who have divided the trust funds among themselves, who have promised to pay for its capital stock in cash, which promises they have not kept, and on which they are still liable, and which the corporation neglects to enforce, and who have made contracts with themselves in reference to the trust fund, the profits on which contracts they ought in equity account for to the trust fund upon the most simple principles of equity.

Again, on page 23:

We think the facts we have stated would furnish ground for judgment of forfeiture of all the franchises of the corporation, including the principal franchise, to be a corporation on proper process. According to the American decisions, judgment of forfeiture on *quo warranto* is not followed by an absolute forfeiture to the Government of all the property of a corporation, as was the earlier English practice; but a court of equity in such case has jurisdiction to divide the assets among the creditors or stockholders.

I here call the attention of Senators to this expression:

*We have no doubt also of the right of Congress to repeal the charter*, which is expressly reserved in the act of 1862, and that on such repeal equity would distribute the assets in like manner. But the objection to either proceeding is twofold: first, it would be harsh and unjust to forfeit the rights of the present stockholders, a large majority of whom have bought their stock in good faith in the market, for the wrong-doing of their predecessors; second, in either case above supposed, equity could only distribute the assets as in case of bankruptcy or death; neither court nor Congress could compel the present owners to embark their property in continuing the exercise of the same franchise under a new organization. *The railroad must then stop or be operated by the Government*, or be sold at a forced sale in the market. To either of these proceedings there are grave public objections.

Certainly, Mr. President, there were grave public objections, the chief of which would have been, that it destroyed the great object for which these companies were organized, and for which they were endowed with these enormous powers flowing from the property committed to their hands.

I have read this much that we may see the case from testimony which cannot be disputed, for this report is founded upon abundant testimony which accompanies it and which sustains every allegation. No dissenting views were expressed, and it stands to-day as the recorded judgment, accepted and acted upon by the House of Representatives of the United States, after the fullest consideration and examination of all the facts. But the Government did not proceed, as it had a right to do, according to the opinion of this committee, to revoke this charter, to annul any privilege, to deprive them of any right. Proceedings I believe were taken in one of the courts of the United States, to recover from some of these corporators individually, the money which they had transferred to their own pockets in violation of their trust. For some reason or other that effort seems to have been unsuccessful. I care not now to criticise the vigor or the ability of the prosecution, although I have heard both questioned. But we see what has been done in the past, confessedly proven to be done, the complete destruction and perversion of the objects for which these two laws were passed; and what is our condition to-day? Has any remedy been furnished; has any portion of this money been refunded? Have the other provisions of the law been carried out satisfactorily to Congress? No, sir. I do not care to repeat the statements which have been made

by the honorable Senator who reported this bill from the Judiciary Committee or his able associates, which stand unchallenged by any minority report or upon the floor of the Senate; but it seems that the sinking fund provided for in the sixth section of the act of 1862 is as yet without one dollar. I mean that up to the 1st of last January not a farthing had been paid, but under a construction of the company or that of their private counsel, which they so readily obey, "net profits" are held to mean whatever the will of the company shall define them to mean, that everything shall be paid in preference to the sum of 5 per cent. net profits.

As to the past this bill proposes no interference, but I believe an adjudication is now pending before another branch of the Government which shall so far as the past is concerned decide the question. As to the future this bill proposes an amendment. It proposes in terms, which have been read in detail in debate, that a sinking fund, a regular annual or semi-annual accumulation of the funds of the corporation shall be established, all of which, be it remembered, are the proceeds of Government bonds or Government lands held by the company in trust for the effectuation of one great object. For whose use is this accumulation to take place? For the sole use of the company itself. It is not proposed that one dollar more shall reach the Treasury of the United States at this time. It is not proposed to hasten the payment of the debt one day, nor to alter the terms of payment, either as to the time of payment or the sum to be paid. It seeks only to provide security, that when the principal and interest shall become due in 1898, or in twenty years from this time, the means of payment shall then be ready to meet and discharge both; so that twenty years hence the company shall be solvent and capable of prosecuting the great object for which it was created and which if insolvent it would be incapable of doing.

This proposition of the Judiciary Committee, which I shall not detail at greater length, has been denounced as an attempt to impair the obligation of a contract, and so to be in conflict with the spirit, not the letter, of the Constitution. Never was there a more palpable misdescription of the object and effect of this measure. It is not an act to impair in any degree the obligation of a contract, but rather an act to assist and promote the performance of a contract, by averting a state of things which will render impossible the great and paramount object for which the contract was entered into, and whereby these corporations are made the agents of the Government and trustees of the public lands and money in order to effectuate it. If no steps shall be taken, and taken promptly, to arrest the present course of the companies, who are selling and dividing everything they can among their stockholders, in twenty years from now no alternative will be presented to the people and the Government of the United States, but that of losing their entire loan, which with simple interest would amount to a sum over $120,000,000, or else taking into their hands a railway two thousand miles long, subject to a prior lien of first mortgages, the principal of which alone is far more than the cost of building a new road. The United States cannot become the operator of a railway. No government however consolidated in executive power has yet done so successfully; and individual interest and enterprise and the spur of individual profit are essential for the proper management of such undertakings.

Then I ask, can Congress, as the guardian of the money and the interests of the American people, stand by and allow the great object of this work to fail? Can they suffer this road to be sold and pass

out of the hands of corporators with whom there is such a contract? It seems to me it would be the clearest default in duty, to which every man among us would be and ought to be held strictly answerable to his constituency. The act of 1862 was altered and amended by the act of 1864; the land grants were doubled; half of the Government transportation was released; the iron and coal, those twin giants of industry and of necessity to a people, on all the lands were given for the purposes of this act; and for what object? For the profit of those corporators, to enrich the stockholders? No, sir. They were given to enable the companies to fulfill and accomplish the great object of their agency.

The honorable Senator from Georgia [Mr. HILL] yesterday said that this company was "not incorporated for the purpose of paying its debts;" but I would say it *was* incorporated to be and remain a solvent instrument capable of performing the objects for which it was created. Its solvency and its ability to pay its debts are essential for the performance of the great object of its creation; and the power that made it can promote the object, by compelling such an administration of its affairs as will enable that corporation to do its duty under the law that brought it into being and by force of which alone it can exist.

I say if from any cause, dishonesty, incapacity or simple misfortune, the great object of the law is imperiled, it is within the inherent as well as expressly reserved power of the Government to protect the object by amendatory legislation, if it be requisite to accomplish that end. Mr. Huntington, the president of the company, admits, as I understand, in his statement before the Judiciary Committee, that insolvency is threatened, but whether he says so is not the question. It is within the competency and the discretion, and the plain duty of the Congress of the United States, to ascertain such facts for the information of its own conscience, and to act as to it shall seem meet and proper under all the circumstances.

Mr. President, the charge that this bill impairs the obligation of a contract, is not only serious as a matter of law, but even more serious as affecting the moral character of the American people. I do not stand here to inquire whether the Constitution, which contains so clear an inhibition to a State, affects in any way by intendment the functions of the General Government. I prefer to make a broader statement.

That property is the creation of law and can securely exist only under a government of laws is certain, and therefore, when by law a right of possession and enjoyment of property has been fairly acquired, it would be wholly subversive of every principle, to admit that it was competent in the law-making power to destroy that which it was designed to create and protect. All such pretensions are met and overthrown by reference to the fundamental principles upon which a government of laws is founded. Hence flows the duty of government, State and Federal, not to impair the obligation of contracts, which means, of course, the moral and legal binding force of laws in existence and under which the contract was created. The right to take private property for public use upon the payment of just compensation is, of course, excluded from this.

The interpretation of contracts is to carry into effect the mutual intent of the parties, and to do this the language they have used, in its just sense and meaning, is taken as the controlling guide. Where the contract is expressed in the words of a statute, the courts are bound to take the act as they find it, or to use the figure of the hon-

orable Senator from Georgia, [Mr. HILL,] "As the tree has fallen there must it lie."

The binding force of statutes upon courts of justice is well stated at page 85 of 1 Otto, the case of the United States against the Union Pacific Railroad Company. I read the language of Justice Buller in an early case in the King's Bench, cited by the learned Judge DAVIS:

> We are bound to take the act of Parliament as they have made it: a *casus omissus* can in no case be supplied by a court of law, for that would be to make laws; nor can I conceive that it is our province to consider whether such a law that has been passed be tyrannical or not.

And Lord Chief Baron Eyre, in a case in 1 Henry Blackstone's reports, said:

> I venture to lay it down as a general rule respecting the interpretation of deeds, that all latitude of construction must submit to this restriction; namely, that the words may bear the sense which by construction is put upon them. If we step beyond this line, we no longer construe men's deeds, but make deeds for them.

Then said the Supreme Court:

> This rule is as applicable to a statute as to a deed.—1 *Otto*, 85, 86.

Whether "the law be tyrannical or not" the court must construe it as they find it. Chief Baron Eyre says that "*the words may bear the sense*" which by construction is to be put upon them. No word can be superadded, and *e converso* none may be subtracted.

Mr. President, such was the rule laid down to the admiration and perfect satisfaction of the Pacific Railroad Companies, in a suit against them by the United States Government, to collect the interest upon the subsidy bonds loaned by the Government, and theretofore paid out of the public Treasury; and it was then, for want of a few simple and customary words to secure the repayment of interest upon bonds payable in thirty years and which had been regularly paid every six months by the United States, that the American people were informed, to what I believe was the astonishment of every one excepting the select few who had been parties to the drafting and passage of those acts under which the decision was reached, that on a loan of its credit by the Government for thirty years, during which time the interest would amount to more than double the principal, no interest whatever should be paid by the party to whom the loan was made, but all payments of interest should be postponed until the principal itself became due!

Is not such a result out of the usual course of business? May I not appeal to the common sense and experience of every man who hears me? What would be the fate of a counsel, of a conveyancer, of any simple scrivener, who should permit his client to make such a loan, in which the interest was so far more important than the principal, and make no provision in the instrument taken for its security for the payment of the interest as it should fall due? It is saying not too much to say that such an agent would be strongly suspected of infidelity to his client, and if not condemned as unfaithful, would be judged so incompetent that employment in similar cases would never happen to him again. I do not desire to criticise the opinion of the court under the law as they found it. It was so interpreted according to the strict letter of the statute, and all through the decision, as rendered by the learned jurist who is at present a member of this body and one of those who favor the present bill, will be found the expression showing that he held himself bound by the letter of the law as it stood, and he sought from no fact to obtain a construction, which would relieve the legislature from the effect of the language which they had seen fit to adopt.

I ask shall not the same rules of interpretation and construction be accepted now? If a single word could not be interpolated in the *casus omissus* of the act of 1862, what is to be said of the proposition now made by the opponents of this bill, to subtract an entire, independent, concluding, and controlling section of an act from its just place and weight in the construction with the remainder? By what canon of interpretation can warrant be discovered to drop an entire section from a statute, and control a statute without having reference to all its parts? Section 22 of the law of 1864 provides:

*And be it further enacted*, That Congress may at any time alter, amend, or repeal this act.

We are now gravely asked to read that law with that section blotted out. It seems to me not more unreasonable, if the holder of any mortgage should, by the same methods of so-called interpretation, convert it into a deed in fee simple, simply by dropping out the clause of defeasance. One would be just as reasonable, and in my judgment just as successful, when urged before a court learned in the law.

These words "alter, amend or repeal" are words of common use and undoubted signification. Lexicographers give them. They are almost synonymous. Worcester says that alter means, "to change partially, to make otherwise or different, to vary, to modify." "Amend," he says, is "to reform, to correct, to make better, to rectify, to improve, to amend." "To repeal" is "to call back, to recall, synonymous with to abolish," and "to abolish," means "to make void, to annul, to abrogate, to revoke, to repeal." I will not agree that these words can be deprived of any of their usual force and meaning as defined in their common acceptance. I ask with confidence of those who hear me, in the language of Lord Chief Baron Eyre, are they to be permitted "*to bear their sense*," the sense that universal use and acceptance has always assigned to them? If this reasonable and admitted rule be adopted, is not this question lifted out of all doubt? For if these words are permitted to bear their sense, then the act of Congress of 1862 or of 1864 is open at any time at the will of Congress to alteration, amendment, or repeal.

But, sir, I have sought light from every quarter in this case. There were made before the Senate Judiciary Committee, on behalf of the railroad companies, many able arguments by distinguished men, to whose arguments I have given careful examination, having been supplied with them in printed form, and having read them with the respect to which the character and standing of their authors entitle them. One of the counsel, Mr. Shellabarger, of Ohio, who has so full knowledge of the affairs of this Pacific Railroad, shown by the report in which he joined and from which I gave copious extracts at the beginning of my remarks, undertakes to find a reason why this twenty-second section does not apply to the loan of its credit by the Government, and the honorable Senator from Georgia [Mr. HILL] has taken the same position. At page 56 of the pamphlet of arguments before the Judiciary Committee, printed for the use of the company, from which I now read, Mr. Shellabarger asserts, that the effect of this law compelling the creation of a sinking fund for the protection of the debt, and the preservation of the solvency of the company in order that it may be able to perform its duties under the act, is in effect making a loan due thirty years from the date immediately due; or, in his own words, converting "a thirty-year loan into a call loan," thereby impairing the obligation of a contract, and in order to overcome the

power expressly reserved to Congress to alter, amend, or repeal the act he makes this criticism:

First of all, let it be carefully kept in mind that the parts of these acts which tender this loan and fix its terms are in no proper sense parts or elements of the charter or incorporation, and, as such, defining the nature of the corporate life, power, and relations to the public, but, on the contrary, these parts of the act making the loan and fixing the date of its payment are severable and distinct parts of the acts, directed to the tender and making of a loan to the corporation, and to fixing its exact terms. These loan clauses are no more part of the charter proper than they would be, were they embodied in a separate statute, as they might have been.

And again, at the next page:

The parts of these acts which fix the terms of the loan and tender it to us are, in a legal sense, no part of the charter proper, but are in the nature of a commercial and personal contract between two parties, as borrower and lender, having its own distinct and fixed terms *as a contract*, such parts of these acts are not subject to the same rules of interpretation as are those parts directly creating the corporation and bestowing its powers, and which more immediately affect the public, as public laws.

And following in the track of the counsel for the railroad companies, the honorable Senator from Georgia at page 32 of the speech delivered by him on the 27th of March spoke in reply to a question by Mr. BECK:

Mr. BECK. The act of 1864 gives the right to alter, amend, and repeal. In your mind that is an absolute nullity on that position.

Mr. HILL. I say those words apply to the exercise of the corporate franchise; but they are an absolute nullity as applied to the contract.

Mr. President, by what authority Mr. Shellabarger and the honorable Senator omit the language of the act I do not know. The repealing clause of the act of 1864 does not give to Congress the power at any time to alter, amend, or repeal the incorporation of the company or any of its franchises. It gives to Congress the right to "repeal this *act*." I ask by what authority is it that you are to apply a different rule of interpretation to one section of an act than to another. It is a rule of construction never doubted, that a law must be read each part having reference to every other part. It is without warrant of any rule of construction known to me, that a concluding and interpreting section of an act is to be read in different senses when applied to different parts of the same law. At page 59 of his argument, Mr. Shellabarger says:

"The provision making this loan," the Supreme Court says, "are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which existed when it was passed."

But nowhere has the Supreme Court said that any one provision or section of this law was to be construed "outside" of the act in which it was contained. It is, with all due respect to the honorable Senator and the able counsel who urged this defense, a perversion and misapplication of the language and meaning of the court. At page 79 the judge said this:

*Many of the provisions of the original act of* 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which existed when it was passed.

Will it be believed that this language of the court, construing an act by the surrounding facts of contemporaneous history, should gravely be sought as an authority to control the interpretation of one portion of the act of 1864 by wholly omitting another portion of the act? Judge DAVIS, who delivered this opinion, nowhere suggested the idea that there was anything special or different, more or less restrained, in the power of the Government over one section of

that act than over any other section or part. On the contrary, so far as the expression of one thing shall be held the exclusion of another thing, Judge DAVIS did intimate throughout the whole of the opinion that if that power of amendment had been exercised, and words had been found in a statute passed in pursuance of the power, his decision would not have been that which it was. It is the act of 1864 that we are construing; and this expression of the court, which Mr. Shellabarger has forced from its natural meaning, and the phrase which he has torn from its context, when you come to read it, would have application only to the act of 1862, and then only in regard to the construction to be given to the entire act in reference to historical events. I do not dispute the ingenuity of this proposition but altogether deny its soundness or relevancy. Mr. Shellabarger says it "might as well have been a separate act." My answer is that it was not a separate act. It was a single act containing many provisions, but all subject to the final section. The power of the Government to alter, amend, or repeal ran just as much to one part of the act as to any other.

Therefore, to say what it might have been as a separate act is, of course, to state a new case. Nor did the Supreme Court say that any provision of the statute or any section of the statute was "outside" of it, but merely that the whole statute was "outside the usual course of legislation concerning grants to railroads." Nowhere in the whole opinion can any warrant be found for saying that a different rule of interpretation is to be applied to one as against another provision of the act. The honorable Senator from Georgia [Mr. HILL] says at page 14 of the same speech:

> It is that the Government is not a party to contracts like these contracts of loan in its character as a sovereign but only as a civil corporation. As a sovereign the Government does not lend money. As a civil corporation it does not legislate. As a civil corporation it is subject to the law of contracts precisely as are individuals. When, therefore, the Government as a civil corporation enters into such contracts, it cannot reserve the right to use its legislative powers as a sovereign to alter, change, or annul that contract to which it is a party. As a civil corporation it can reserve no power which in its character as a civil corporation it does not possess.

But surely the fountain of authority to pass every part and all the parts of this statute is one and the same. The law-making power originated every franchise, every grant, every authority for every contract, and all in the same capacity as the legislative branch of the Government. It reserved to Congress the same right to alter and amend every feature alike, and has the same power over all, and can repeal one or all with equal right and power.

At page 78 of the same book of arguments on behalf of the railroad companies is a letter from Mr. Sidney Bartlett, of Boston, a gentleman so well known and conspicuous for his professional ability, whose powers of discrimination in the use of language are admitted and admired by all and excelled by none. This letter was produced by Mr. Shellabarger in aid of the view he had taken, and in which Mr. Bartlett criticises the power of Congress under this power to alter, amend, or repeal the act of 1862 or 1864 which he restrainedly declares are "debatable if not difficult questions." He uses these words:

> The next question raised by the proposed legislation is the following: Under the power to alter or amend, can legislation be sustained which shall make a debt already incurred, *and by contract—that is, by charter*—made payable with interest in thirty years, payable immediately, in part or in whole?

I merely refer to the use of language by this careful master of the art of language, to show that he uses the charter and the contract as

convertible terms, and that, when he speaks of the charter he speaks of the contract, and when he speaks of the contract he speaks of the charter. I submit that this is also the language of the Supreme Court of the United States in the case in 1 Otto; that the contract which is referred to by the court is the contract that was created by the granting of a franchise, and the acceptance by the corporation, or of any act performed by the corporation under the authority of the charter; that you cannot separate one from the other; you cannot detach the contract from the charter; for the charter and its acceptance constitute the contract; the contract was formed by the passage of the law and the assumption of duty under it by the party who accepts the franchise.

No, Mr. President, these arguments are ingenious but they are met by the plain legislative language which cannot be frittered away or argued out of its natural and just force. No case has been cited, or can be cited, all the way from the Dartmouth college case to this day, which contains any such facts as the present. No court ever decided that such an express power of amendment and repeal could not be exercised; but on the contrary, the Supreme Court by a unanimous opinion, in the case of Tomlinson *vs.* Jessup, 15 Wallace, which has been referred to, have given the fullest effect to the power of reservation of a charter and of all the contracts under it. I read from page 459. The case has been cited before but I read now from it in order to sustain the position which I have taken:

> The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders took their interests with knowledge of the existence of this power, and of the possibility of its exercise at any time in the discretion of the Legislature. The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation.
>
> Immunity from taxation, constituting in these cases a part of the contract with the Government, is, by the reservation of power such as is contained in the law of 1841, subject to be revoked *equally with any other provision of the charter, whenever the Legislature may deem it expedient* for the public interests that the revocation shall be made. The reservation affects the *entire relation* between the State and the corporation, and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State.

There was also a more restrained power of amendment and repeal contained in section 18 of the act of 1862, and I am disposed to believe with the committee of the House, that there might have been full warrant for the present law or for the repeal under that. But looking at the fact, as stated by the Supreme Court in 1 Otto, that the enterprise languished and virtually had failed, and but for the act of 1864 would have had no vitality, is not clearly one of the considerations for the passage of the law of 1864 and its acceptance by the company, with all its enormous grant of money and land, the expressed and unrestricted reserved right "to alter, amend and repeal," with no limit but the discretion of Congress, enlightened by reason and justice, and acting in subordination to the great first principles of the social compact for the protection of property lawfully acquired?

Mr. President, there seems to me a strange insensibility on the part of the American people to the immense practical importance of this legislation. The apparent indifference with which they witness the enactment of laws, by force of which they and their posterity are saddled with debts of enormous magnitude, amazes me—

nor is my surprise lessened to see members of either branch of Congress, who desire and expect to be maintained in their positions as popular representatives, so hastily and recklessly dispose of the hard-earned property of the people, and yet expect to retain their confidence and approval. When I contrast the coolness and indifference with which measures involving such enormous pecuniary interests to the whole people are acted upon, with the excitement I have seen in this Senate and in the other House over some such comparatively small matter as the payment of a few thousand dollars more or less to the Chief Magistrate of the Union; when I have seen special bills brought in here, and valuable public time occupied, and an immense degree of interest excited and sensational attention given by the press and people to the question whether the Chief Magistrate of this country should receive $50,000 a year or $25,000, or whether the Supreme Court judges should receive two or three thousand dollars more or less of salary, or whether the Cabinet officers should be advanced to a rate that would support them a little more independently without draining their private resources to maintain the official hospitalities expected from them, or when members of Congress themselves are to have their pay advanced so that there shall be an equalization of receipts by all, as based upon the present mileage allowance—when I see all this popular interest and excitement on such subjects and then see votes given and bills passed which carry away from the public Treasury, and into the coffers of corporations and the pockets of skillful lobbyists—not money by thousands—but millions, such sums as by comparison render the expenses of the executive branch mere drops in the bucket, I cannot but be amazed. Here we are in this bill dealing with sums so great, that the question of executive or legislative or judicial salaries is utterly dwarfed in comparison, and yet there seems to be no popular comprehension, and sometimes I think very little congressional comprehension, of the gravity of the amounts involved and the consequences to our Government.

We were discussing here a few years ago the question of the pay of the Chief Magistrate, and some Senators were asserting that that which barely paid the actual expenses of George Washington in 1789 was quite enough and more than enough for his successor in 1876; and I happen to turn to a bit of testimony found on the second page of the report on this same Credit Mobilier subject, in which the salary paid to one Mr. Franchot as an agent for one of these companies is stated, upon whom was devolved the onerous duty and incredible hardship of spending the winter in Washington and "watching the interests of the Central Pacific Railroad Company" for which service the small remuneration of $20,000 a year was allowed! I know not what may be the allowances of the presidents and high officers of these great corporations, but I suppose they all are in the same proportion; and such sums are mere flea-bites, so to speak, compared to the millions taken every year from the Treasury of the United States in the payment of interest on these subsidy bonds, every dollar of which represents some human being's toil from sunrise until sunset.

Mr. President, these great debts, which are being piled upon the toiling masses of this country in total disregard of the sufferings which are causing one universal groan to arise all over the land, are greatly to be deplored and dreaded in their results—but still more formidable is the question of the inroads upon and the overthrow of *the great republican idea of disintegration, and distribution of power.* The possession of irresponsible power never failed in human history to

corrupt its possessor. Well did our forefathers know it. They knew that power, like jealousy, grew with what it fed upon, and in many modes in building up this Government they sought to check its growth.

They did not intend that the individual should wither, but by encouraging individuality they sought to encourage the growth of men. They sought, not strength by massing weakness, that atom might protect atom, but, by creating the greatest number of vigorous integers, to make the state strong. Out of individuality grows competition; out of consolidation grows monopoly. Hence their political institutions, the abolition of rank and title, abolition of the rule of primogeniture, an equal division of estates without regard to sex, the subjection of lands to the payment of debts, the equality of all men before the law, wide-spread suffrage, destruction of entailed estates, limitation upon devises, all tending to facilitate the distribution of wealth and power and to prevent perpetuities. And yet the doctrine and practice of incorporation was suffered to creep in, destroying as it does individuality, consolidating as it does all power and making its owners morally irresponsible, creating artificial beings who never die and whose estates are never to be distributed, but are perpetual.

Mr. President, the consequences of this may be remote, but to my eye they are certain. It is the creation of power without moral and legal responsibility, and that is fatal to any form of government under which it shall be encouraged or permitted to exist.

The consequences of this measure now proposed are intended not for to-day so much, as for a future time when few or none of those of us who now discuss it will be here. It is for the future that this law is prepared; it is for generations perhaps yet unborn that this protection is demanded. I hold it to be the duty of Congress to assert, and to exercise in the spirit of high and wise discretion, its reserved power over the great public interests touched by these corporations. I hold that nothing can justify the release of any portion of that power. I hold that no compromise of any kind can be discussed in relation to that power. This is no mere grant of land, it is no mere grant of money, because the grants of both have reached such a magnitude, that the power contained in their possession becomes political power; and it may well be that, in the generations yet to come, the vast population who are to inhabit the grand territory traversed by these railways, to fill it with American activity and enterprise, over whose necessities of transportation, over whose necessities for fuel, over whose necessities for the arts and occupations of life as connected with iron, the great working metal of the world, and coal its necessary coadjutor—it may be that those people will come to ask whether they are to live under the principles of a free constitution or under the by-laws of a corporation, which is without restraint except those limitations that human endurance will ever put upon power, let it assume what shape it may.

Sir, I hope and pray that this Congress will not release one iota of its power of amendment, alteration, or repeal over the acts which brought into being these artificial persons and created them the agents of the American people, to use the money and the property of that people for the public welfare and not for private profit. It is my sense of the importance of this bill, of the magnitude of the consequences involved in the decision of the Senate that has induced me to detain it so long.

Mr. JOHNSTON. Mr. President——

Mr. THURMAN. Before the Senator from Virginia proceeds, I rise to give notice that I shall ask the Senate to sit this bill out to-day.

Mr. EATON. I hope the Senate will not do anything of that kind. This is a matter too large to be sat out to-day, in my judgment.

Mr. PADDOCK. Do I understand the remark of the Senator from Ohio to be more than a suggestion that we shall sit it out to-day?

The PRESIDING OFFICER, (Mr. INGALLS in the chair.) The matter rests wholly with the Senate.

Mr. PADDOCK. There is no motion.

Mr. JOHNSTON. Mr. President, before proceeding to discuss the two bills reported respectively from the Committees on the Judiciary and Railroads, touching the debts due from the Central Pacific and the Union Pacific roads to the United States, I consider it appropriate to make a brief statement of the

FACTS OF THE CASE.

The first law authorizing the construction of a railroad from the Missouri River to the Pacific Ocean was passed July 1, 1862, and reserved to Congress the right at any time to add to, alter, amend, or repeal the act. The United States were to issue their bonds for the use of the companies, bearing 6 per cent. interest, which aggregated for the Union Pacific $27,236,512. These bonds constituted *ipso facto* a first mortgage upon the roads and all their stock, &c. On the 2d July, 1864, another law was passed which contained a proviso differing only from that in the law of 1862 in that it omitted the words "add to." This last permitted the companies to borrow money and issue their bonds for it to an amount not to exceed the bonds issued by the Government and displaced the first mortgage of the Government and gave these last-named bonds the priority.

Under this authority the Union Pacific issued its 6 per cent. bonds for $27,232,000, which are a first mortgage. The annual interest on the bonds issued by the Government is $1,634,190.72, payable semi-annually. The annual interest on the first-mortgage bonds is $1,633,920.

To indemnify the Government for the interest paid by it annually the law allowed the retention of one-half of the amount due each year from the Government to the roads for transportation of troops, supplies, mails, &c., and also required the companies to pay each 5 per cent. upon their net earnings. As was only to be expected, a difference arose between the roads and the Government as to what constituted net earnings. The Government said that net earnings were what remained after deducting from the gross income nothing but operating expenses. The roads said that net earnings were only the residuum of income after paying all just and lawful obligations. The 5 per cent. on net earnings payable to the Government under existing laws is in round numbers $250,000 and the one-half transportation about $421,000, which together make $671,000. The interest paid by the Government annually on its Union Pacific Railroad bonds is as stated above $1,634,190.72. Deducting the sum received by the Government from the interest it pays and we have $963,190 paid out each year by the Government in excess of what it is entitled to and can take under the present law. The whole interest paid by the Government to this time is $15,969,801.45, of which $5,134,327.84 have been repaid by the company in the manner prescribed by law, leaving $10,835,473.61 still unpaid. But the company claims further credits amounting to $2,899,652, which if allowed will leave the balance due the Government of interest paid by it of $7,935,821.61.

The condition of the Central Pacific is very similar. The loan to it and to the Western Pacific is $27,855,120 at 6 per cent., the interest paid by the Government in semi-annual installments being $1,671,-

340.80. The interest paid by the Government and not refunded is $13,508,338.65.

The half-transportation account for the past warrants an estimate for the future of $200,000 each year, and the 5 per cent. of net earnings may be put upon the same basis at $300,000, making half a million in all. Taking this from the interest paid by the Government, it leaves the road in arrear each year about $1,170,000.

The Committee on Railroads, in the elaborate and able report presented by them on this subject, estimate that at the maturity of the bonds issued by the Government to the two roads, the Union Pacific and the Central Pacific, principal and interest, will amount to $154,258,137. If no sums are paid to the Government by the roads except as now provided by law, the committee estimate that after deducting credits already given and those to be annually received, the roads will be in arrear the enormous sum of $120,000,000 to the Government alone. Add to this the principal of their first-mortgage bonds—for they are paying the interest on them—which is in round numbers $55,000,000, and we find that twenty-two years hence—not a long time in the existence of a government or a great public corporation—the debt of the two roads will be $175,000,000.

THIS IS A SITUATION FULL

of peril to the Government and to the stockholders of the road themselves. There is danger that the Government may lose the whole or at least a large part of its debt or be forced into the purchase of the roads, and I would consider this last alternative a greater evil and a result more to be deplored than the loss of all the money. I would never be willing to see the United States become owners and managers of a large railroad corporation. Carried on as it would have to be by an immense corps of officers and employés, it would never be profitable. It would add to the already overgrown patronage of the Executive, afford another opportunity for official plunder and dishonesty, swell and enlarge the powers of the General Government. It would be an utterly irresponsible corporation, doing absolutely as it pleased and liable to nobody for damages for anything. No session of Congress could occur in which its affairs would not be the subject of debate and probably of legislation.

On the other hand the purchase of the roads by either Congress or any other party for any sum less than the lien upon them would destroy the stock and be attended with its total loss to the stockholders. So that

BOTH THE PARTIES

have every interest to agree upon some measure. The stockholders ought to strive to save their stock and retain control of the road, and the Government to save itself if it could without having to buy and carry on a railroad.

THE ENDS TO BE ATTAINED ARE:

1. To save the Government as far as possible.
2. To interfere as little as may be with the control of the road.
3. Not to disturb any vested rights.
4. Not to destroy the stock, but to leave the roads at the end of the century free of debt, the stock unimpaired in value, and the stockholders in the complete possession and enjoyment of their property.

If these things can be accomplished everybody ought to be satisfied.

Much has been said of the

POWER OF THESE CORPORATIONS

and the fear has been expressed that they would become so powerful

as to defy the Government or even govern the Government. But I do not share these apprehensions. To enable companies to accomplish great results great powers must be given them. Without these the enterprises which excite the admiration of the world and affect the commerce, trade, and wealth of all civilized nations would never be completed or even undertaken.

And upon this point

A HISTORICAL RETROSPECT

may not be unprofitable. Under the Stuarts in England monopolies very similar in their powers and appliances to the modern corporation grew up and acquired a control not only of the government but of the whole business of the people, far greater than these companies are likely to do. Their powers were exercised entirely for private advantage, without any regard for the public good. Hume has described their birth and growth, the evils they inflicted upon the country. He says:

James had already, of his own accord, called in and annulled all the numerous patents for monopolies which had been granted by his predecessor, and which extremely fettered every species of domestic industry. But the exclusive companies still remained; another species of monopoly, by which almost all foreign trade, except that to France, was brought into the hands of a few rapacious engrossers, and all prospect of future improvement in commerce was forever sacrificed to a little temporary advantage of the sovereign. These companies, though arbitrarily elected, had carried their privileges so far that almost all the commerce of England was centered in London; and it appears that the customs of that port amounted to £100,000 a year, while those of all the kingdom beside yielded only £17,000. Nay, the whole trade of London was confined to about two hundred citizens, who were easily enabled, by combining among themselves, to fix whatever price they pleased both to the exports and imports of the nation. The committee appointed to examine this enormous grievance, one of the greatest which we read of in English history, insist on it as a fact well known and avowed, however contrary to present received opinion, that shipping and seamen had sensibly decayed during all the preceding reign. And though nothing be more common than complaints of the decay of trade even during the most flourishing periods, yet is this a consequence which might naturally result from such arbitrary establishments, at a time when the commerce of all other nations of Europe, except that of Scotland, enjoyed full liberty and indulgence.

And referring to a period a quarter of a century later, he says:

Monopolies were revived—an oppressive method of levying money, being unlimited as well as destructive of industry. The last Parliament of James, which abolished monopolies, had left an equitable exception in favor of new inventions, and on pretense of these and of erecting new companies and corporations was this grievance now renewed. The manufacture of soap was given to a company who paid a sum for their patent. Leather, salt, and many other commodities, even down to linen rags, were likewise put under restriction.

It is affirmed by Clarendon that so little benefit was reaped from these projects that of £200,000 thereby levied on the people scarcely fifteen hundred came into the king's coffers. Though we ought not to suspect the noble historian of exaggerations to the disadvantage of Charles's measures, this fact, it must be owned, appears somewhat incredible. The same author adds that the king's intention was to teach his subjects how unthrifty a thing it was to refuse reasonable supplies to the crown.

It would seem that these monopolies had acquired such power and were so securely fixed that they could control both king and Parliament and could never be shaken off. Yet not only were they overthrown and broken into pieces, but some of the best safeguards of English liberty grew out of them in the end. In describing the

FINAL CONFLICT

between them and the people, we seem to be narrating the history of the last few years of our own country. Investigating committees flourished in that day even more than now. In Anderson's History of Commerce it is told that in the Parliament which assembled on the 3d of November, 1740, "debates and speeches on the nation's

grievances ran extremely high. The grievances complained of were so many and so various, both public and private, laid before the commons, by complaints and petitions, that there were above forty several committees appointed by that house for examining them; and of all those grievances, that of monopolies gave such offense that the house of commons expelled four of their own members who had been concerned in them, and many other members thereupon voluntarily withdrew themselves from Parliament and others were elected in their stead. In consequence of all which strict inquiries a law was passed which the king was obliged to consent to, 'that a parliament should be held at least once in three years for the future, even although the king should neglect to call it.'"

So these mighty institutions were destroyed, and free parliaments grew out of their ruins.

THE ISSUE

between the Government and the railroads and between the Judiciary Committee and the Committee on Railroads relates to the powers of Congress. It is claimed by the Judiciary Committee, and their bill embodies that idea, that, putting aside all consideration of the general power of Congress over corporations created by themselves, and looking only at the laws passed in regard to these two companies, the right reserved in the acts of 1862 and 1864 to add to, alter, amend, or repeal them, gives the right to pass the bill reported by them. On the other hand, the Railroad Committee insists that the acts referred to and the acceptance and performance of the conditions embraced in them gave the companies vested rights and constituted a contract between the United States and the corporations, which the former was bound by and could not violate; that the parties might make a new voluntary contract, but nothing more, unless the companies were guilty of such default as gave the courts jurisdiction to interfere, and that the words in the law, "add to, alter, amend, or repeal," are mere surplusage and mean nothing.

There is no occasion for claiming that Congress has power to invade vested rights or to impair the obligation of contracts. The bill of the Judiciary Committee does neither. Even the advocates of the bill of the Railroad Committee admit that touching certain matters and in certain events Congress may legislate as to these roads. The distinction seems to me to be very clear. If the proposed legislation is contrary to the original purpose of the charter and does not seek to carry it out, it should not be passed. But if it is only in the line of the first purposes of both parties and intended to execute their original intention and contract, then it is entirely within the powers of Congress. The case of the Holyoke Company *vs.* Lyman, 15 Wallace, quoted by the Senator from Ohio, [Mr. MATTHEWS,] clearly defines and well expresses this. The court says:

> Vested rights, it is conceded, cannot be destroyed or impaired under such a reserved power, but it is clear that the power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant and to protect the rights of the public and of the corporators, or to promote the due administration of the affairs of the corporation.
>
> Power to legislate, founded upon such a reservation, is certainly not without limit, but it may safely be affirmed that it reserves to the Legislature the authority to make any alteration or amendment in a charter granted subject to it that will not defeat or substantially impair the object of the grant or any rights which have vested under it which the Legislature may deem necessary to secure either the object of the grant or any other public right not expressly granted away by the charter.

Under this decision it is only necessary to inquire whether the bill

of the Judiciary Committee interferes with vested rights or "carries into effect the original purpose of the grant, protects the rights of the public and of the corporators, and promotes the due administration of the affairs of the corporation."

What vested right does it interfere with? It leaves the lands sold by the companies in the undisputed possession of the purchasers; it leaves the whole management and control of the road in the hands of its owners. It is not a vested right in the stockholders to pay themselves the profits of the road in the form of dividends and leave the debts of the road unprovided for. The original purposes of the grant were the construction of a great highway for the benefit of the public and the promotion of trade and commerce, the loan of large sums by the Government, the repayment of these sums by the roads, and the management in such a manner as to enable them to make the repayment. If the bill will accomplish these things or tends to accomplish them, then according to the Supreme Court it is entirely within the powers of Congress.

Unless the railroad companies deny their obligation to repay to the United States the bonds loaned them, with the accruing interest, they cannot deny the right of Congress to take such steps as may be necessary to secure ultimate payment, if such ultimate payment seems to be endangered. That it is so endangered the roads themselves admit, as has been clearly demonstrated by the Senator from Tennessee in his very able speech.

The Senator from Ohio [Mr. MATTHEWS] says that he "utterly denies the power of Congress to declare that a debt not due is due and to make the debtor pay it before it is payable." The bill of the Judiciary Committee does not declare that the debt owing by the companies is due now to the United States, nor does it attempt to make them pay it before it is payable. When the companies accepted the terms tendered to them by the Government they accepted all the terms—each and every provision of the laws. They could not then be permitted to say, nor can they now, that they took so much as suited them and rejected the rest. Section 5256 of the Revised Statutes, part of the act of March 3, 1873, is as follows:

> The books, records, correspondence, and all other documents of the Union Pacific Railroad Company, shall at all times be open to inspection by the Secretary of the Treasury, or such persons as he may delegate for that purpose. The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation. No dividend shall hereafter be made by said company but from the actual net earnings thereof; and no new stock shall be issued or mortgage or pledges made on the property or future earnings of the company without leave of Congress, except for the purpose of funding and securing debt now existing, or the renewals thereof. No director or officer of said road shall hereafter be interested, directly or indirectly, in any contract therewith except for his lawful compensation as such officer. Any director or officer who shall pay or declare, or aid in paying or declaring, any dividend, or creating any mortgage or pledge prohibited by this act, shall be punished by imprisonment not exceeding two years, and by fine not exceeding $5,000.

Now, Mr. President, suppose the attempt should be made to throw the Union Pacific into bankruptcy, no other corporation and no individual in the whole nation being entitled to that exemption, would not the railroad company protect itself under this section? And could it do this without admitting and yielding to the force of all the other provisions of the act? This section contains this provision very applicable to the present condition of things:

> And no new stock shall be issued, or mortgages or pledges made, on the property or future earnings of the company without leave of Congress, except for the purpose of funding and securing debt now existing, or the renewals thereof.

When they agreed that Congress might add to, alter, amend, or repeal the acts, they agreed to a certain extent to put Congress in the place of the courts and to allow that body to protect the Government by legislation instead of by appeal to judicial tribunals. Having agreed to this they cannot now plead to the jurisdiction of Congress. They said in substance that "We consent that you may add to, alter, amend, or repeal our charters, and we do this in order to put it in your power as a legislative body to protect the Government in the large loan now made to us, and to compel us to carry out in good faith all our obligations and duties, and especially the duty of repaying the advances made to us. To effectuate these things we are willing to substitute you for the courts."

Their agreement that Congress may do this is part of their contract, since it is insisted so strongly that a contract exists between the Government and the companies.

The view taken of the powers of Congress by the Judiciary Committee receives countenance from the provision of section 5256 of the Revised Statutes, which exempts the Union Pacific from the operation of the bankrupt law. This was probably done because it was considered that the Government had ample means of protecting itself under the provisions of the acts of 1862 and 1864. There is no other reasonable explanation of this feature of the act of 1873. When the Government as a creditor surrendered its right to throw the road into the bankrupt courts it must have been because it had in its own hands the means of self-protection.

The right of Congress to take steps for present protection to avoid ultimate loss is only the right secured to the creditor by statute law in every State in the Union, and is also one of the best-established features of equitable jurisdiction. If a man owes a debt not due for years to come and is absconding or removing his property an attachment lies to seize upon the property and hold it for the security of debt. The debt is not due, and the court does not so declare, yet the court sees that it is secured or that the debtor's property shall be held to answer it as far as it will go.

It is upon this same principle that courts seize upon railroads, displace the directors, and put the whole in the hands of receivers; that foreign attachments in equity lie; that injunctions are awarded; that bills "*quia timet*" are maintained. We proceed now against these railroad companies because "we fear" that if we do not the Government will sustain a loss. And we fear so for the best of reasons; at least for a reason that the companies cannot dispute; that they themselves have told us so.

Now are there any special facts which justify the interference of Congress? I insist that there are.

The first duty of every corporation is to provide for the payment of its debts and to apply its means to that end. They should not be permitted in the same breath to declare and actually pay large dividends and to proclaim their own insolvency. Law and good faith both require them, if their income and assets are not sufficient to pay both debts and dividends, that the former should be paid to the exclusion of the latter. But that is not the mode of procedure of the companies. They seem inclined to say, dividends first, debts afterward; that is, if there is anything left after paying dividends. And this not only gives the right but makes it the imperative duty of Congress to interfere.

But this is not the only reason. The law of 1864 declared that the

bonds loaned by the Government should constitute a lien upon all the property of the companies. This is the provision:

And to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said companies, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the companies shall, *ipso facto*, constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued.

Suppose the roads take their means and instead of paying their debts divert their means to other purposes and invest them in property not subject to the mortgage of the United States; what then? Would not this make a just case of interference? It is no matter how profitable to the roads themselves this may be, because their profits derived from this source do not help the Government. They could keep on indefinitely; could continue to invest in other property which would add to their own means and give them increased dividends. They could in this way gradually but surely slip from under the Government mortgage as to much of their assets. That this process is going on, we find from the report of the Secretary of the Interior to this session of Congress, and the documents accompanying it. On the subject of branch roads the Government directors in their report of 1878 say:

With regard to the advances which the Union Pacific Company has made in aid of the roads mentioned, we can but repeat what we said in our report of 1872: "We do not question the wisdom of a policy which tends to secure to the trunk-line the business which the said several roads may command. It could not well afford to have said business diverted from it. The policy, however, should be so ordered as not to interfere with whatever present or future claim the Government may have for reimbursement." The ability of the company to make the advances referred to shows that it could have returned more to the Government than it has, and raises the question of the power of the company to divert its means into channels not authorized by the law.

The total advances made and the companies aided appear in the following table and those in last year's report:

Investment in Summit County Railroad Company: $134,500 bonds; 622 shares full-paid stock; 2,759 shares assessable stock, and valuable coal-lands. Estimated value and cost, $60,000.

| | |
|---|---|
| Colorado Central Railroad has been aided to the extent of | $1,610,497 86 |
| Credits secured by Union Pacific Railroad Company | 767,156 20 |
| Balance without interest | 843,341 66 |

The investments in the Utah Central, Utah Southern, and Utah Northern Companies have not been increased during the past year, and remain as stated in the report of the Government directors for the year ending June 30, 1876.

The statement of investments in the Republican Valley Railroad has not yet been received, and will not be in time to be embraced in this report. The Union Pacific Company's investment in this road is regarded as a safe and remunerative one, as very considerable aid has been secured from the counties into which it has been constructed, and the country will supply it with a large local business.

The Utah Central, Utah Southern, and the Colorado Central are the most important of the roads aided. These, and the Utah Northern, are reported quite fully in the reports of the Government directors for the years 1872, 1873, and 1876. The Republican Valley road in Nebraska, and the Summit County Road in Utah, involve investments of more recent date.

Aid to other roads is in contemplation by the company; one to the Black Hills region, and one to secure the business of Montana. The Government directors believe that this policy of the company should at all times be held subordinate to its obligations to the United States.

These extracts show not only how extensive have been the investments of the Union Pacific in other roads, but indicate what is to be the policy in the future in this respect. However profitable this may be to the road itself and beneficial to the country at large, still it is,

nevertheless, a divergence from the original charter, an enlargement of the powers of the road, and a withdrawal of the assets to purposes not contemplated.

It is admitted by the counsel for the roads, who put in a printed argument before the Judiciary Committee, that the clause reserving the right to amend, alter, or repeal has some meaning and significance, because he says that it "was inserted to protect the rights of the Government in case the companies should fail to build the roads, as was then not improbable that they would do, and the Government should be obliged to take up the unfinished work itself, or so alter the law as to bring in other parties to complete it."

There is nothing whatever in the law to justify this restricted interpretation. If this was the only purpose of the reservation the right to repeal need not have been reserved. But this is a concession on the part of the companies that the reservation is not entirely surplusage, but that it actually had vital force and means something. And if it is once conceded that the Congress could alter the law for failure to comply in any one respect, it is an admission that it could be legally altered or amended on account of any other failure of duty. If the companies are voluntarily doing anything to impair their ability to pay the Government or if they are putting any of their means out of the reach of the Government, unquestionably they are failing in the performance of one of the duties imposed by the laws.

But while I agree that we can constitutionally impose terms upon the roads and have power to pass the bill reported by the Judiciary Committee, still I do not altogether approve all its provisions. The provision as to net earnings may give right to disputed constructions of the law and litigation in the courts, a thing to be avoided if possible. It would be better to require the roads to pay semi-annually a sum in gross, so many dollars, dependent upon no question of earnings or transportation, but such a sum as the roads could pay without serious injury and as would indemnify the Government in a reasonable time. This sum ought to be paid not in money but in bonds of the United States. There is now a premium upon the 5 and 6 per cent. bonds of the United States, which is likely to continue. If money is paid in, this premium will disarrange all our calculations about the sinking fund, for a million of money will not buy a million of bonds, and thus the sinking fund will fall short of realizing what is expected and desired. But if the companies, instead of paying in money are required to pay bonds, no such difficulty will arise and the effect of the fund can be easily estimated and a calculation will tell with certainty how much it will make by a given period.

Mr. SARGENT. Mr. President, it is conceded on all sides that a sinking fund is necessary, or at any rate desirable. An important difference arises, however, as to the question whether such sinking fund shall be obtained by further contract between the Government and these parties, or shall be the result of the exercise of the will of one of the parties. The extraordinary claim of power to repeal not only the provisions of the charter but legislation affecting property rights, has been perhaps sufficiently discussed. I do not intend to go at any length into that question although I may refer to it incidentally as I proceed in my remarks; but I wish to call the attention of Senators to the fact, and specifically to the fact, that this bill furnishes the occasion for the fattest lawyers' fees, for the most glorious prospects in the legitimate pursuit of their profession, of any legislation in my memory that has ever passed Congress. It certainly cannot be called a statute of repose. It promises no rest either to the Government or the railroad companies.

There is a provision in this bill contingent upon the amount that shall be necessary to pay other obligations besides those due to the Government that the amount required for the sinking fund may be reduced, and one of the elements of calculation is put entirely within the power of the Secretary of the Treasury, who is to allow more than 75 per cent. or less as he may see fit; and one of the points which he is to decide upon is what are the necessary repairs of the Pacific roads. What does this term include? I have no doubt if the question were asked the Senator from Ohio who reports the bill [Mr. THURMAN] and the Senator from Vermont who sustains it [Mr. EDMUNDS] what is meant by "repairs," their definitions would be very different; certainly it would be very different between those who have unfriendly feelings toward these companies and desire to punish them, in the parlance of the prize ring to "punch them," and those who wish to deal fairly with them.

Do these "repairs" include the replacing of worn-out rails or not; and, if so, are iron rails to be replaced with steel rails? A common carrier is liable for accident upon his road unless he uses the very best appliances known to his business. Does this term "repairs" include the substitution for old appliances of those which experience or invention has produced in order to observe the common law in this regard? Does it mean the replacing of wooden bridges and trestle-work, which time makes more and more frail and infirm, by iron bridges as good business sense and tact would require should be done; or is a quarrel to be raised before the Secretary of the Treasury on this question every time a wooden trestle is taken away and an iron one put in place of it?

There is scarcely one of the details of the bill that is not liable to the same criticism. In fact, the bill prepares for an annual contest between the companies and the Government by that clause which goes upon the assumption that 75 per cent. of the net earnings may not pay their operating expenses and their interest on the first mortgage. They must make this manifest to the Secretary of the Treasury, and then he can allow them to retain more than 75 per cent. How make it manifest? Suppose he will not act on this reasonable showing? Suppose he will not take the responsibility of deciding any doubtful point in their favor, for fear of popular clamor or congressional censure? This is likely to happen. It did happen when the Secretary of the Treasury refused to pay one-half of the transportation account, illegally, according to the Supreme Court, and did so before the act of Congress authorizing him to retain it until action by the courts. This power confided to the Secretary of the Treasury supposes a duty on his part, and a right in the companies, which can be enforced in the courts, or should be, and hence it is the theory of the bill that there may be as many suits as there are years before the maturity of the bonds—suits depending upon a complicated tissue of facts and not upon mere questions of law that a single case would settle.

The first section of the bill goes upon the principle that not only the contract of the companies with the United States can be waived off under this right of amendment, but even any decision that the Supreme Court may make of the contract in favor of the companies may be disregarded. The Senator from Ohio [Mr. THURMAN] explains for the Judiciary Committee the reason why this provision was inserted in the bill, namely, "This section shall take effect on the 30th day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States

or of either of said railroad companies existing prior thereto," by saying:

The reason of this last clause is that a suit is now pending in the Supreme Court of the United States, in which a judicial determination is sought as to what is the meaning of that provision in the charter which provides that the United States shall receive 5 per cent. of the net earnings, and very dissimilar views are taken of the right of the United States under that clause by the law officer of the Government on the one side and by the companies on the other. The law officer of the Government insists that there should be deducted from the gross receipts of the companies nothing but their operating expenses, in order to ascertain the sum upon which the 5 per cent. is payable to the Government; in other words, that "net earnings" in that clause of the charter consist of gross receipts, less operating expenses alone. On the other hand, it is contended by the companies that "net earnings" are only what remains to each company after it has paid all its interest upon its debt which is inferior in lien to that of the United States, as well as that which is superior, and all other expenses of every kind and description; that, after deducting all these from the gross receipts, what remains and would be distributable as dividends to the shareholders is the sum upon which 5 per cent. is to be computed and paid.

The Senator says the bill proposes to leave that question to the Supreme Court as far as the past is concerned, but for the future the bill is to substitute the meaning of Congress for what the Supreme Court may say is the proper interpretation of a contract to run by its terms until 1900. By this provision a serious legal question is raised, going to the very root of this legislation, that the Supreme Court must ultimately decide, and that is whether the right of amendment of the charter or contract, "having due regard to the rights of the companies," gives to Congress the power to impair rights vested under it, and which have been judicially ascertained by the highest tribunal of the land.

In short, a contest arises that goes to the very root of the matter. Have we the legal power to pass this bill? The question is by no means the clear one assumed by the Judiciary Committee. The decisions of the courts, from Marbury *vs.* Madison, guard rights vested under legislation against invasion under subsequent legislation and limit the effect of a legislative reservation to alter and amend within boundaries that protect private and corporate rights.

The force of these decisions and of this principle was amply recognized in 1862, when the power to alter, amend, and repeal was limited by the condition that due regard should be had to the rights of the parties. The power conferred by the act of 1864 related to the same subject-matter, and must be construed in *pari materia* with that of 1862. In any event, in my judgment, it must be so construed as not to impair the obligation of existing contracts. Sound morals so require. I differ with my colleague in his position on this matter. I do not deem it ridiculous to hold that the nation owes the same honorable dealing to its debtors and creditors that a private man owes to his. We are stronger. We love to call ourselves sovereign. But how long has it been that might makes right or excuses violated faith? And Congress has no more right to violate its promises, either in letter or spirit, to an artificial person, like a corporation, than to a natural person. It has no more right to take back its promises to a corporation that it has created than to one which it has not. While arraigning these corporations for acting in bad faith, let us keep our legislative garments clean.

Undoubtedly any State can enact as part of its general corporation law that all corporations organized under it shall set apart 25 or 50 per cent. of their net earnings for the security of creditors, and if corporations organize under it they cannot complain. But that is not the case here. The Government is a contracting party; in the

language of the Supreme Court, it held out inducements for capital and enterprise to embark in this undertaking, one of which was that the interest should not be exacted until the maturity of the bonds, and one-half transportation and 5 per cent. of net earnings should be annually applied on it. Now, after the inducements have had their effect, and capital and enterprise have accepted and built the road, it is proposed to repeal the inducements, to break the promises; and this is justified on the ground of power. I concur with those Senators who say that this is not only a violation of the Constitution by impairing the obligation of contracts, but of those moral instincts and principles of natural justice which underlie society and make civilization possible; and it is not philosophy which finds anything unnatural in this position.

But all these questions are to be decided by the Supreme Court, and we may find ourselves back again where we started, as we were so recently set back.

My colleague objected to the assent of the companies being asked to the modifications of the contract contained in our legislation, and said, as he did in his speech two years ago, that the bill on that theory ought to be transmitted for approval to the presidents of the companies as well as to the President of the United States. The object of such assent is to avoid litigation. Such an assent was sought in 1862 and 1864. I do not know that it was then claimed that it was illegal, illogical, unconstitutional, or unfair to submit the bills in that form to the companies for their assent. Section 7 of the original act provided as follows:

*And be it further enacted*, That said company shall file their assent to this act, under the seal of said company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning, as herein provided, to the western boundary of Nevada Territory, before the 1st day of July, 1874.

Where is the impropriety of submitting the present act to the companies for their assent? The subsequent act of 1864 had the same provision for such assent, requiring it to be filed within a year, under the seal of the company. If that act was an exercise of power complete when it sprang from the legislative will, as it is claimed that a law is, that we legislate and do not contract, why require this assent of the companies to its validity, to its going into effect? New conditions are to be now required, and old modes of securing them, if now asked for, are denounced as unusual, unconstitutional, and infringing the dignity of Congress, or submitting to a corporation that which only can be submitted to the Executive. Why, sir, in the State law-books statutes will be found, over and over again, that where modifications are made in the privileges granted to corporations, or restrictions are made on them, the companies are required to file their assent to the act. They might be piled up by the dozen and hundreds to show that I am correct in my remark in that particular.

The Supreme Court of the United States said with reference to this matter that there was not merely a charter but a contract, referring to the Union Pacific Railroad. It might have said with reference to the Central Pacific road that there was no charter but a contract, for the charter was derived from the State of California, and subsequently from the State of Nevada, and those two States, embracing nearly the whole length of its road, authorized it to construct the road through their territories so far as the franchise was concerned. Only one hundred or one hundred and fifty miles toward Ogden were built under

any assumed franchise from the Government of the United States. The laws we have passed on this subject, the laws of the State Legislatures, have never gone upon the presumption that it takes only one party to make a contract, or one party to alter it. Or is the animus of this legislation mere persecution, and that which the companies will assent to, however fair, liberal, and just, is to be rejected because they assent to it, to find something that will be distasteful to them? That is worse than the pitilessness of Shylock, for he did not seek to enforce a contract that Antonio had not assented to, or to vary one by his own will. He only asked what was nominated in the bond. Senators are so sensitive when it is suggested that a senatorial majority may be unjust, which by the way it sometimes is, and misinformed and inconsiderate, that they might repel the intimation that the duke made to the merchant of Venice if made by some observer to the railroad companies:

> I am sorry for thee; thou art come to answer
> A stony adversary, an inhuman wretch
> Uncapable of pity, void and empty
> From any dram of mercy.

To justify this state of feeling Senators have lashed themselves into fury over the presence of the officers of the companies, at a time when the very life of the enterprises committed to them may be in peril, and have raked over the muck of forgotten slanders for motives for a heat that cannot be disguised. I do not care to go over that beaten track. If there is sufficient motive to be found in the acts of the Credit Mobilier for what would otherwise be inexcusable in this legislation, you stop short of your duty. It seems to me that this contract must be treated as subsisting, or as violated. Either forfeit the property to the Government and administer on it, or cease railing at the men who created it under contract with you while allowing them still to hold it. But this bill, with its declared purpose of still further agitation, gives no promise that these companies can be permanently dismissed from Washington. I fear they will still come between the wind and our nobility. They must do so in self-defense.

But there is a fairness to be observed even in such arraignments. When my colleague computes the cost of the roads as if the full value of the various bonds had been available for their construction and deduces therefrom that no money was paid for stock, he overlooks very discernable facts. It is well known that these roads were built during the period of the greatest depression of the Government credit. Government currency bonds were not worth more than ninety cents on the dollar. Mr. Dillon says that some of their income bonds, for which they have now a sinking fund, were sold at forty cents on the dollar. Labor and material had to be paid for in gold on the Pacific side, and at one period gold was bought at the rate of $2.20 in paper, and was always at an enormous premium. The debt now stands in magnified proportions compared with the value of the money loaned by the Government. Thus the proceeds of the twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars' worth of Government bonds issued by the Government to the Central and Western Pacific Road was but $19,119,552.92; an enormous shrinkage. Yet the whole amount of nearly $26,000,000 stands charged against those companies and is to be repaid in full by them in current money when due with the interest. I do not know whether it will be admitted that any equitable considerations arise therefrom: that the Government should consider that it advanced depreciated money and receives by its contract good money. But it is not fair

to assume that the fearfully depreciated money of that day had the purchasing power of good money, or was as much aid in the enterprise as its nominal value indicated.

Again, not only was currency so greatly depreciated as compared with gold, but all articles needed in building railroads were at abnormal prices. Thus rails cost $100 per ton. Steel rails can now be bought at $40. Locomotives, of which the Government was a large competing buyer, cost $32,500 apiece, that can now be bought for $7,000. All iron, rails, and material for the building of the Central Pacific had to be sent round the Horn or across the Isthmus. Freights which are now $5 per ton cost from $25 to $33 per ton. The freight on a locomotive was $4,000, nearly its present price. Insurance was at war risks, 17 per cent., that is now 2½ per cent. The road was built through an uninhabited and mountainous country, where was nearly no timber, water, fuel, food, or forage, the Pacific side thousands of miles distant from the real base of supplies. Supplies for man and beast had to be hauled long distances. Even water had to be so hauled, there being none to be had for miles. It was the same with fuel, which had to be hauled eastward over six hundred miles for the use of trains. It is a standing wonder that the road was built at all, considering the engineering difficulties of the Sierras, the depreciation of the currency loaned, and the great cost of all necessary articles.

But after the track was laid across the mountains it was a matter of doubt whether it could be kept open through the winter snows. Ten first-class engines were necessary to a single snow-plow in some storms. Forty miles of snow-galleries were built, as solid in construction as timber and iron could make them, story on story against the sides of the mountains, to catch and carry over the avalanches that swept from the heights above. The cost of these structures on the average was $100,000 per mile, making the cost of that forty miles for snow-sheds alone as much as building two hundred and fifty miles of road would cost in a prairie country. But add to that the cost of the long tunnels, the deep cuts, the rock-ribbed mountains, which were deeply furrowed to make a bed for the iron track, with the expenses of equipment, stations, and other outlays, and some idea can be formed of the cost of the Central Pacific road across the Sierra Nevada Mountains.

Such a road could not be built without substantial Government assistance. Enterprising men could not have been induced to undertake it and push it through unless the Government had held out prospects of profit to them both in building and running the road; and the Government was liberal in promises, even if the currency in which it redeemed its immediate engagements was subsequently depreciated by the progress of the war. It did not seek to make a close bargain. Viewed from the stand-point of to-day, and now that the country has become accustomed to the benefits of the road so much that it has forgotten the great necessities that induced it, it made a bad bargain. The Judiciary Committee said in 1873 that it was a bad bargain, but there was no help for it.

I am not at all satisfied with the commentary that was made upon this opinion of the Committee of the Judiciary submitted February 24, 1871, by the Senator from Vermont, [Mr. EDMUNDS,] when attention was called to it the day before yesterday by the Senator from Massachusetts, [Mr. DAWES.] This decision or opinion of the Judiciary Committee of that day says as plainly as the English language can say it that there was this bargain made between the companies and the United States, in effect that it was a bad bargain, but that

there was no remedy except according to the terms of the contract. I venture to say that not a single man who assented to that report of the Judiciary Committee had an idea that the contract could be avoided by legislation. The very resolution of instruction which led to the report required the committee to ascertain "what legislation, if any, is necessary to compel reimbursement to the Government." They did not suggest any legislation, not a line of it; it is new light which they have acquired since, and this report is entirely in opposition to the report which they have submitted on the pending bill and to all the theories which they have advanced in this debate. They had then something to say about what would be honest on the part of the Government. Their solicitude on that point seems to have vanished; they are now only solicitous about the honesty of the corporations. The honesty and good faith of the Government does not seem to be within their guardianship as it was at that day. On page 4 of that report they say:

It is questionable, however, whether, in a case like this, where the Government, by its legislation, has encouraged the investment of capital in a work of national importance, it would be quite honest or becoming the dignity of the Government to shelter itself behind this technical rule of judicial construction. The stockholders of this company might well say that they understood these acts as they were understood by the two Houses of Congress at the time of their passage. It would be rather harsh treatment to twist out of these acts, by refinement of criticism, a construction unfavorable to the company, and directly opposed to what everybody in Congress and out of it understood to be their meaning at the time they were passed and the money invested.

But what difference does that meaning make under the present theories of this same committee? All they have to do is to pass a ten-line bill and vary it or repeal the whole thing. They may call it all a charter, divested of the character of a contract by their theories, and remedy the whole matter at will.

But furthermore they say:

Your committee were not called upon to criticise the wisdom of these acts of Congress, but to answer as to their true construction; and in discharging this duty the committee is obliged to report the law as it is, without regard to what they might desire it to be.

And yet they were instructed to report further legislation provided it was necessary. They seemed then to think it was necessary to give a true construction to these laws. Why? You can wipe out the law and the contract by substituting something else in place of it, under the power to amend and repeal, say the Judiciary Committee at the present day. Why then construe what is so easily obliterated? They say, then:

It is proper however, to suggest that the company is clearly bound to keep its road in repair and in use; and any failure of the company in this respect would authorize the Government to take possession of the road.

But nothing short of that would authorize them to do it. Until there was a default they could not proceed, through the courts or otherwise, to wind up the affairs of the corporation.

The refusal of the company to perform the services for the Government provided for by the sixth section, or to appropriate 5 per cent. of its net proceeds, would also authorize the Government to take possession.

All these things the company does, and these are the only contingencies, say the committee of that day, which would authorize the taking of such possession or dealing harshly with the companies.

But while the company shall continue to comply with these requirements, the Government, if it has not all the security it might desire, has all it ever stipulated for, and has no right to complain. And at the maturity of the bonds, if the company fail to pay principal and interest, the Government may take possession of the road, which the company, in the mean time, must keep in use and repair.

Any one who assumes that that opinion can be made consistent with the present position of the Judiciary Committee will be able to demonstrate that black is white, that good morals are bad morals, or any other proposition whatever, no matter what its absurdity. The whole report goes upon the presumption that there is a contract to be construed and not to be violated or set aside, and that the Government must be satisfied with the security which it took at that time and cannot enlarge the security, and if it made a bad bargain it must abide by it.

The Court of Claims in the case of the Union Pacific *vs.* The United States also said it was an improvident bargain but treated it as a bargain binding in the future as in the past. On page 583 of 10 Nott and Hopkins's Court of Claims Reports in the opinion of the court in that case is found the following:

> But beyond the confines of all disputed construction there remains one uncontroverted provision in the statute, which seems decisive of the legislative intent. The only party to whom an option was reserved by the act is the Government, and that option is the important right of making the company's services as little or as great as it pleases. If it requires these services, the company cannot withhold them; if it refuses all employment, the company cannot exact it. As the compact originally stood the Government could keep down this interest without the expenditure of any ready money, by simply furnishing to the company this employment, and it might push the advantage to an unlimited extent, even to carrying the earnings of the road to the liquidation of the debt before it had matured. The subsequent statute, which substituted a half for the whole of the earnings, did not affect the legal import of the Government's reserved discretion nor change the legal relations of the parties, nor vary the construction applicable to the original statute. It was an alteration in degree and not in kind, and still left the company in this matter of service entirely subject to the orders of the Government. In contemplation of law, the wrong and injury of which the Government complains are entirely of its own choosing. Courts of law cannot be invoked to aid persons where they themselves possess the means of redress. If an ordinary party were to come into another court with such a complaint, he would be told: "Either you have willfully withheld this employment from the other contractor or you have been unable to furnish it to him. If the former supposition is the fact, then the fault is your own, and you cannot ascribe wrong to one who, you confess, has always been willing to repay you in the manner which your agreement prescribes. If the latter is the fact, then, because the sources of payment which you provided disappoint you, and because the payment in kind which you elected to take gives you more of the transportation service than you really require, you are trying to shift your loss to other shoulders than your own. Your misfortune is really this, that you made an improvident bargain."

I pause here to say that the Government has acted a most unbusiness part toward these companies by not giving them all its transportation instead of shipping by way of the isthmus, where it has had to pay all cash from the Treasury, when it could thereby have applied at least one-half of the cost to the extinguishment of this debt. It is not the fault of the companies, for they have always stood ready to do that transportation as low as for private parties. The interest could have thus been kept down, and perhaps extinguished. As the Court of Claims say, it is a wrong, and one of the Government's own choosing, and it ought not to complain of the accumulation of interest and make it an excuse for rigorous measures, when it had the remedy in its own hands under the contract, and to neglect that remedy was an expensive loss to itself and a gross injury to the companies. Congress should long ago have directed this to be done, and not have left the different Departments, which had transportation to be done but no particular interest in the reduction of this debt, to use other modes of transportation to the Pacific, which took large annual appropriations from the Treasury. The neglect of Congress has partly arisen from the jealousy of rival Pacific Railroad schemers, who feared to have such a law passed lest it would injure the interests of their pro-

jected roads when completed. But under the circumstances the accumulation of interest is not an argument against the companies.

But, resuming my train of remark, where is the great misfortune in making an "improvident bargain," provided the bargain may be varied in any way by the legislative will? Certainly it is a very temporary misfortune. I should like to ask upon that theory where was the use of sending this to the Court of Claims and the United States Supreme Court at all? Why was it necessary to go through all this machinery to get the construction of a law which was to be repealed as soon as it was construed, and the legislative will substituted for the construction of the courts? These parties were sent to litigate this matter in the Court of Claims; they were allowed to do so, and in the Supreme Court; and these courts sent them back, or sent the United States back, with the assertion that you made an improvident bargain and you must abide by it. How do we propose to abide by it? By this legislation, by exacting that which we did not exact before, by enlarging the terms of the bargain on behalf of the United States and shrinking them so far as the companies are concerned. That is the logic of the whole proposition. The Supreme Court unanimously confirmed this judgment of the Court of Claims, which was for $512,632.50 in favor of the company, and no one can read the opinion of the court, delivered by Justice Davis, and not see that the idea is carried all the way through it that a contract binding on the respective parties is being construed one to run till the maturity of the bonds, and not a mere moot case, the decision of which had no binding force on the future relations of the parties.

The court proceed to show that the enterprise was considered a national undertaking, for national purposes, and that the public mind was directed to the end in view rather than the particular means of securing it; that the road was a military necessity, and that there were other active reasons for it, the protection of an exposed frontier, &c.; that there was a vast unpeopled territory lying between the Missouri and the Sacramento Rivers, practically worthless without the facilities afforded by a railroad for the transportation of persons and property; that its construction would develop the agricultural and mineral resources of those regions, bring them forward and make great States of them, turn them first as they have been into organized Territories, and some of them, like Nevada and Colorado, into States. This was pointed out by the Supreme Court as a reason for the bargain which the Government made at that time. They then go on and speak of the difficulty of building the road considered by many persons as insurmountable, building a railroad two thousand miles in length over deserts, across mountains, through a country inhabited by Indians jealous of intrusion upon their rights, and they say:

> It is nothing to the purpose that the apprehended difficulties in a great measure disappeared after trial, and that the road was constructed at less cost of time and money than had been considered possible. No argument can be drawn from the wisdom that comes after the fact. Congress acted with reference to a state of things believed at the time to exist; and, in interpreting its legislation, no aid can be derived from subsequent events. The project of building the road was not conceived for private ends; and the prevalent opinion was that it could not be worked out by private capital alone. It was a national work, originating in national necessities, and requiring national assistance.
>
> The policy of the country, to say nothing of the supposed want of constitutional power, stood in the way of the United States taking the work in its own hands. Even if this were not so, reasons of economy suggested that it were better to enlist private capital and enterprise in the project by offering the requisite inducements. Congress undertook to do this, in order to promote the construction and operation of a work deemed essential to the security of great public interests.—1 *Otto*, 81.

The Supreme Court directly recognizes that inducements, extraor-

dinary inducements, were held out because there was an extraordinary work in hand, of great public utility, which the Government could not build properly except through private hands. Now, when the road is completed, these inducements, which undoubtedly were understood by the capitalists whose energy and capital were brought in play to be promised until the maturity of the bonds, these inducements, I say, which the Government then held out are now to be withdrawn and we are to say to them, "Why, we of course got you into this; we have got you to labor for it; in the language of the Supreme Court we got you to put your money into it; but we only meant it until you got firmly fastened into the enterprise and then we would take it away from you; then we would lay down new and exacting conditions, of which if we had notified you in advance you would not have taken a step toward building the road; now we will pass a new law and not rest upon the judicial construction of the contract under which you operated. We will pass a new law varying these terms, which will remove the inducements under which you acted." I say every line of this decision goes upon the theory that that is improper, that it is unfair, unjust, contrary to public morals and in violation of the Constitution of the United States. The court say:

> It is true, the scheme contemplated profit to individuals; for, without a reasonable expectation of this, capital could not be obtained, nor the requisite skill and enterprise.

And yet by this bill all hope of profit would be cut off except in a certain contingency; and the reasonable expectation which grew out of the legislation of that time is to be disappointed by taking away the opportunity of contemplated profit to individuals.

> But this consideration does not in itself change the relation of the parties to this suit. This might have been so if the Government had incorporated a company to advance private interests, and agree to aid it on account of the supposed incidental advantages which the public would derive from the completion of the projected railway. But the primary object of the Government was to advance its own interests, and it endeavored to engage individual co-operation as a means to an end, the securing a road which could be used for its own purposes. The obligations, therefore, which were imposed on the company incorporated to build it must depend on the true meaning of the enactment itself, viewed in the light of contemporaneous history.

And further along in this decision they show what these companies can be required to do, which they say are three things, and three things only:

> First, to pay said bonds at maturity; second, to allow the Government to retain the compensation due the corporation for services rendered, and apply the same to the payment of the bonds and interest until the whole amount is fully paid; third, to pay over to the Government, after the road shall have been fully completed, 5 per cent. of the net earnings of the road, to be appropriated to the payment of the bonds and interest.—1 *Otto*, 85.

On page 88 the court say:

> Compelled as it—

The Government—

> was to incorporate a private company to accomplish its object, it proffered the terms on which it would lend its aid. If deemed too liberal now, they were then considered, with the lights before it, not more than sufficient to engage the attention of enterprising men, who, if not themselves possessing capital, were in a position to command the use of it. These terms looked to ultimate security rather than immediate reimbursement, inasmuch as the corporation would require all its available means in construction; and to require it, while the work was in progress, to keep down the interest on the bonds of the United States, might seriously cripple the enterprise at a time when the primary object of Congress was to advance it. There could, however, be no reasonable objection to the application "of all

compensation for services rendered for the Government" from the outset, and of "5 per cent. of the net earnings after the completion of the road" to the payment of the bonds and interest. These exactions were accordingly made.

Mr. EDMUNDS. May I ask the Senator a question?

Mr. SARGENT. Yes, sir.

Mr. EDMUNDS. I notice that he reads very fairly the part of the decision that he thinks applies to his views, but I notice one phrase there that he reads, where the court say that the thing arranged for was looking to ultimate security. Now I wish to ask my honorable friend——

Mr. SARGENT. Will the Senator please read the passage? [Handing book.]

Mr. EDMUNDS. I heard the Senator read it. I have no doubt the words "ultimate security" are there. It is at the bottom of the page, I see:

These terms looked to ultimate security rather than immediate reimbursement, inasmuch as the corporation would require all its available means in construction.

I wish to ask my honorable friend what there is in this proposition of the committee for a sinking fund but exactly that thing, ultimate security for the performance of a duty, which I believe everybody agrees rests upon these corporations, to meet their obligations to their creditors, including the United States, when they became due?

Mr. SARGENT. The Senator is very readily answered. Whatever Congress then did in making this contract looking to ultimate security is binding, but it has no right to come in now and enlarge the terms in favor of the United States, in order to still further look to ultimate security. That is all. I was reasoning from the late decision and showing that the court treated it as a contract between the parties; but because the Government has power, through its National Legislature, to express its will in proper cases by law, it is no more potential, in morals or justice, than a private individual dealing with another private individual, to avoid its contracts. It cannot tear up the parchment containing its stipulations and deny to the party of the other part the benefit of them because it can make laws. By what right can it, after having entered into an engagement, accepted by its creditor or debtor, declare that it will be bound differently from the terms of the engagement?

Mr. EDMUNDS. Then "ultimate security" being the thing, and not present payment, that Congress was to look out for, the contract (as the Senator well styles it, an arrangement or contract) provided that the supreme legislative tribunal of the Union, standing indifferent between the people who furnished the money and the people who took it, should have the right in the future to change the constitution of the arrangement. Why is not that a pure exercise of the right of "ultimate security" which the companies themselves agreed to just as much as they did to that part of it which said that they should have the bonds?

Mr. SARGENT. The Senator goes off into another branch of the subject.

Mr. EDMUNDS. Not at all.

Mr. SARGENT. I have no objection to discussing that fully. I have already referred to it. I do not believe that when, in 1862, it was provided that Congress should have the right to alter, amend, or repeal the act, having due regard to the rights of the parties, and subsequently, when, in 1864, they reserved the right to repeal or amend in order to carry out the objects of the act, which were the building and maintenance of a railroad, &c., that they thereby ever reserved

or that it was thought by Congress that it reserved the power, or that it was understood by the companies that Congress reserved the power to say the Government will make the interest presently due, when it was to be due only when the bonds became due, or the bonds should be required to be paid before they matured, or more than the 5 per cent. should be retained, as this bill proposes swelling it to 25 per cent., or any other of the exactions which are now proposed could be made. In other words, I believe the power to amend, alter, and repeal was simply to provide that if these parties did not carry out their contract and build a good road, a first-class road, and keep it in repair and give the Government preference in the use of it, the Government would have the right to take it out of their hands and put it in the hands of men who would build it and run it properly. It was simply in reference to those matters that the power to amend or repeal was applied and understood by the parties at the time, and not to the taking back of the "inducements" which motived private parties to enter into the contract.

And I repudiate the idea that Congress stands in the impartial relation to these parties which is claimed. Congress is the mere organ of the Government for certain purposes. It does not stand as an umpire between the Government and those who contract with it. In effect it is one of the parties to be bound by Government contracts, and has no right to deny or impair their obligations.

Mr. EDMUNDS. If my friend will allow me, because I have entire faith in the sincerity of his convictions, it seems to me that he does not present the case that is presented by the bill now in hand. He says that it was not understood that Congress should require these people to pay their debt before it was due, as if this were the proposition. But it does not appear to us that this is the proposition. The proposition is, when you strip it of its flounces and furbelows, that each of these corporations shall not put its tolls into the pockets of its stockholders in such a way and to such an extent that it is confessedly impossible for it to meet its engagements; that is all.

Mr. SARGENT. The legislation provided for profits to the extent of 10 per cent. to the corporators and that one-half of the net earnings should be retained by the Government. The Senator's bill provides that the whole of the net earnings shall be paid to the Government——

Mr. EDMUNDS. Oh! no.

Mr. SARGENT. I do not mean the net earnings; I mean the compensation——

Mr. EDMUNDS. No, sir; not the compensation.

Mr. SARGENT. I cannot yield to be interrupted by the Senator unless he lets me complete a sentence before another interruption.

Mr. EDMUNDS. Certainly not. I am only making a suggestion by the courtesy of my friend, and I will not interrupt him to his annoyance for a moment.

Mr. SARGENT. The Senator certainly interrupts me when I am trying to complete a sentence.

Mr. THURMAN. The Senator from California ought not to misstate the bill.

Mr. EDMUNDS. I apologize, because I am acting by the grace of my friend entirely.

Mr. SARGENT. Not merely that; the Senator knows that I am never slow to allow interruptions, even if they come by couplets, as in this case, when the two prominent members of the Judiciary Committee unite their forces. That I have no objection to, only I do de-

sire that I may have an opportunity of completing my sentence, and not to be interrupted in the middle of it.

Mr. EDMUNDS. I beg the Senator to believe that I am not disposed to complain of his right to take his own method to discuss the measure.

Mr. SARGENT. I was only going to say, and I will say, if allowed to do so, that by the original contract between these parties, as modified in 1864, it was provided that only one-half of the compensation for transportation should be retained by the Government, the other half to be paid over to the companies. So stated the Supreme Court when the question was submitted to it. That was not only the language but the meaning of the act, as construed by that tribunal, which was appealed to. Now comes in this proposition, and that not merely one-half the transportation money shall be retained in the Treasury of the United States, but that the other half shall be retained there also. Of course it is said it shall be treated as if it were the money of the companies. They shall not be allowed to use it; but we say we will allow them about two-thirds of the interest they could make upon it if they were allowed to handle it themselves; we will seize upon it and put it into our strong box, or put it into our bonds, and the lowest bonds we can devise, and they shall have the benefit of the interest so made, whereas they themselves claim, and unquestionably with truth, that the money in their hands will be worth a great deal more than the interest the Government will allow for it. I am perfectly willing, now that I have completed my sentence, to have the Senator say if that is not a fair statement of the original contract and the modification to be made by this bill.

In view of this decision, which so strongly emphasizes "the inducements held out" by the Government "to procure the requisite capital and enterprise," I again ask, as I did a day or two ago:

> Was it understood by the companies and those who were enlisting in the enterprise that subsequently Congress should take back the original land which was given, or that they could subsequently make new conditions as soon as the road was built and was in operation, stating that the whole of the transportation should be paid to the Government and more than the 5 per cent. should be?

To that question the Senator from Ohio [Mr. THURMAN] replied from his seat, "Certainly." Then were these "inducements" mere mockery. Then was the most stupendous confidence game played the world has ever seen; and the submission of any such question to the Supreme Court was a roaring farce. Suppose the Government should now pass an act guaranteeing to the Texas Pacific Company a stipulated interest on its bonds, so many thousand dollars per mile, if the road should be built in such a manner and with such speed, and exacting a mortgage on the completed road as security, reserving a right to alter and amend the act, would it be said, if it left the act unamended until after that company had completed its road, as required, that the Government could refuse to pay the interest, or any part of it, or compel the company to refund the interest as fast as it was paid, or forego all dividends to deposit in its hands annually a sum of money not originally stipulated for, as a sinking fund or security? And yet why not, on the principle claimed by the majority of the Judiciary Committee? On that principle no company can rely on retaining the benefits of an executed contract. I warn my friends who are interested in the Texas Pacific road that you may assent to a principle that by and by may destroy you; for who would take your bonds with such practical repudiation insisted on by the Congress of the United States?

My colleague assumes that it is admitted that Congress has a right to alter a contract after default, if I correctly understand him. Every one will admit that in its original legislation it had a right to reserve any power, and the assent of the companies to the legislation made the reservation binding on them. But it is not admitted that a reservation was made in that original legislation to withhold the promised consideration of an executed contract, but only to retain power to compel the completion and due maintenance of the road, to carry out the objects of the legislation. There is no more power to change a contract after than before a default, but there is a present power to seize property and revenues in case of default which does not exist before default. The assumption that "the right to alter, amend, or repeal is the right to alter every section, every line, word, and syllable of the act, subject only to such limitations as are in the Constitution of the United States," means nothing in view of the limitation contained in the last part of the sentence, or it is flatly denied by the able lawyer who reported this bill from the Judiciary Committee, [Mr. THURMAN,] in reply to the question of the Senator from Maryland, [Mr. WHYTE.]

MR. WHYTE. * * * I am rather opposed to this sinking-fund theory, and I supposed there was no impediment to requiring the companies to pay, in addition to the 5 per cent. and the half-transportation account, a sum which would be equal to the whole interest paid semi-annually by the Government.

MR. ALLISON. And apply it now to payment?

MR. WHYTE. Certainly, apply it now.

MR. THURMAN. I beg to call the Senator's attention to what in my judgment, and in his I think, as a lawyer, is an insuperable obstacle to that proposition. So far as the 5 per cent. of net earnings and the half-transportation account, which under existing law are applicable annually, to use the very language of the act, to reimburse the Government the interest which it pays are concerned, there is no difficulty whatsoever; but to take a further sum and apply that presently to the payment of the interest of the debt due to the Government, would be to make the bill obnoxious to the charge that we are requiring money from these companies before it is due.

MR. BLAINE. Why cannot Congress alter the law in that respect?

MR. THURMAN. Does the Senator mean that we shall alter the law and make the whole debt payable now?

MR. BLAINE. Under the Senator's theory, where is the particular point at which the Senator from Ohio stops in his volition to alter the law? That is what I want to be instructed upon.

MR. THURMAN. If the Senator needs instruction it is because he has not listened to me or anybody else who has spoken in favor of the bill of the Judiciary Committee.

MR. BLAINE. I have listened with a great deal of interest.

MR. THURMAN. If we had the power, I for one would not be willing to exercise it; but we have never asserted the power to make that which is payable thirty years hence, or now twenty years hence, payable to-day. We have never asserted any such power yet, and I do not think we ever shall.

Mr. CONKLING. When was this debate?

Mr. SARGENT. Last night.

A line of that legislation made the debt due in thirty years, and both as a lawyer and an honest man the Senator from Ohio recoils from altering or amending it. The same principle, I submit, and for the same reasons, should protect other stipulations put in the legislation as "inducements to capital and enterprise" to build the road.

Mr. President, in summing up the great favors which these companies have received from the Government of the United States, the great grants which have been given to them, described in such exaggerated language, it may be worth while to reflect whether those considerations presented by the Supreme Court of the difficulties almost insurmountable, considered by many as too insurmountable to be overcome, should not be considered, and also the fact that the Government for years before and during all the time that the Pacific rail-

roads were being built was taxed for transportation, necessary transportation, far more than the whole amount of annual interest which it pays upon these bonds.

Mr. PADDOCK. Was it not nearly double the amount?

Mr. SARGENT. Yes, sir. The Senate is not in want of official information on this point and has not been for years. Suppose by the loan which the Government made to these companies, which costs it annually $3,000,000, it has saved $6,000,000; is not that to be taken into account? Suppose the whole amount of expenditure on account of these roads, if never a dollar was paid upon them, funded up to 1900, is not more than half the amount that the rate of expenditure which the Government was paying at that time, funded into a sum, would reach, I ask if there is not an immense balance on behalf of the Treasury on account of the dealings of the Government with these companies? The Government, says the Supreme Court, wanted to cheapen its immense cost of transportation over these deserts, widely separating the inhabitable parts of the country, and it succeeded in that. A Senate committee in 1871 laid all the facts in reference to this matter before the Senate, and showed that the cost of the mail service to the Pacific coast had been annually increasing for several years before the opening of the road. The committee say:

From June 30, 1860, to June 30, 1861, the cost of the overland route from the Missouri River to California alone was $954,855.15. From June 30, 1861, to June 30, 1864, the same service from the Missouri River to Placerville, was $3,210,000, or, per annum, $1,070,000. To these sums should be added the steamship service, which averaged, including incidental charges for agents, &c., at least $200,000 per annum, and the cost from Placerville to San Francisco, about $50,000 per annum.

Against these enormous sums, which the Government was then annually paying out, and which it would be paying to-day, and even greater sums, were it not for the Pacific railroads, is to be put the present cost, which is about $250,000 a year. The statement itself is startling, but it is entirely waived aside in the eager desire, the eager rush, headed by the Judiciary Committee, to put their hands upon all the money which the men may have earned who carried out the enterprise under the inducements of the Government, contrary to the contract by which this great saving in the matter of mails alone has been effected. The committee proceeds as follows:

It will thus be seen that the average cost of mail transportation for four years, previous to June 30, 1864, was $1,296,213 per annum.

It costs now less than the odd figures.¶

With the increased cost of labor and materials, the cost of this service was greatly increased after 1864. The effect of the railroad will be shown by a comparison of the cost of mail service in 1868 with the year 1870,

And then they give a table showing the total cost from June 30, 1837, to June 30, 1868, $2,129,550. Be it understood furthermore that this mail service as then rendered was always uncertain, interrupted, liable to be broken up by Indians, toilsomely going over barren plains. I do not know that the cost was greater than the expense of it to those who carried it or much greater; but at any rate it was a very precarious and uncertain service. The shortening of the time is of great importance to the business of the country. Instead of twenty-five days, the mail is now carried across in seven or in six and a half. There are other incidental advantages besides the immense reduction of cost to the Government, besides the immense added amount which is left in the Treasury of the United States to be devoted to other purposes, which, had it not been for this enterprise, would have been annually taken from it. The committee show by their report made in 1871 that the contract price for Government transportation before the war was $1.30

per hundred pounds for each one hundred miles, and the prices increased after that greatly. The highest price of transportation paid to the railroads in 1871, and it is less now, was not more than twenty-five cents per hundred pounds for one hundred miles; that is to say, less than one-sixth of the amount that it was before the construction of the road and much less than one-sixth of the amount it was during the time of the construction of the road.

The amount which the transportation—for which $4,178,967.90 was paid—would have cost, at the rate of $1.30 per one hundred pounds per one hundred miles, is therefore—

Says this committee—

a matter of mathematical calculation. That sum would have been $21,730,633.80, showing a saving of $17,551,666—

Up to 1871—

which would pay all arrears of interest now due upon the bonds issued to the Pacific railroad companies more than three times over.

Oh, there was no advantage to the Government in building the road! There was a deceitful pretense of munificence to certain private parties, under false inducements held out, intended to be repealed, to get them into it, to get all this great saving of millions afterward to the Government, and then to draw back any promise the Government had given. It was no advantage to the Government, of course! Seventeen millions and over up to 1871 lying in the Treasury of the United States, or used for other beneficial purposes, before that time would have been paid out for transportation, but is saved by the operation of the road. Oh, let us grind them down; let us be hard-hearted to them; let us exact the most that we can, take away their profits, and rail at them because they made money out of the construction of the road. That is the animus of the legislation, it seems to me. I say it is unjust and unfair and harsh, and well merits a comparison with the language of the Duke of Venice to Antonio that he deals with—

> A stony adversary, * * *
> Uncapable of pity, void and empty
> From any dram of mercy.

Then the committee proceed and say:

The Secretary of War on the 15th of February, 1871, in answer to a resolution of the Senate, estimates the cost of the military service, through the War Department, in guarding the overland route from the Missouri River to the Pacific Ocean, from the acquisition of California to 1864, a period of sixteen years, at about $100,000,000, and states that this sum "is rather below than above the true cost of the service." This sum would equal $6,250,000 per annum for the entire period. As this expense was constantly increasing, the annual cost at the time of the opening of the Pacific Railroad must have been much greater. *

The expenses of the Indian service for the same period, as shown by the report of the Commissioner of Indian Affairs, was over $560,000 per annum, and the mail service averaged a little less than $1,000,000 per annum for the whole time, but in the year 1864 it had reached $1,296,000 per annum, and was increasing with the population of the Pacific coast. These sums together make an average annual cost, from 1841 to 1864, of over $8,000,000.

These statements fully corroborate the statement of Secretary Stanton and of the chairman of the Senate Committee on the Pacific Railroad, made in 1862, that the cost of this Government service at that time was about $7,500,000 per annum, and that this cost was annually increasing.

The whole amount of the bonds issued in aid of all the Pacific Railroads is $64,618,832. The annual interest on the same is $3,877,129.92. The earnings thus far have paid about 30 per cent. of the interest, which, deducted from the annual interest, leaves the net annual expenditure for interest $2,713,991.

The net result to the United States may be thus stated:

The cost of the overland service for the whole period from the acquisition of our Pacific coast possessions down to the completion of the Pacific Railroad was over $8,000,000 per annum, and this cost was constantly increasing.

The cost since the completion of the road is the annual interest—$3,877,129—to which must be added one-half the charges for services performed by the company, about $1,163,138 per annum, making a total annual expenditure of about $5,000,000, and showing a saving of at least $3,000,000 per annum.

Mr. President, with a saving of $3,000,000 per annum to the Government ever since the road went into operation, there is certainly a strong reason why the Government should be considerate in its dealings with the companies, why it should, while it can, secure adequate security that this debt and its interest shall be ultimately paid, yet not require that it shall be paid at a too short specific time with the accumulations of interest, to the danger of breaking up the road, throwing the company into bankruptcy, or causing the roads to become dilapidated, or overburdening Pacific commerce. The Government should not do these things, but instead it should give such time and such terms to the companies as will enable them to discharge their obligations.

Mr. CONKLING. Mr. President, the Senator from California is kind enough to yield to me to make a suggestion. I heard the Senator from Ohio suggest that he would ask the Senate to wait and "sit out" this bill to-night. It seems to me there is as little reason for submitting the Senate to a night session upon this bill as upon almost any bill I can think of. The Committee on Appropriations, pending the bill, with the consent of the Senate, take up their appropriation bills *seriatim* as they are ready, and it therefore is hindering no legislation which is urgent; and, inasmuch as there are some twenty years, I believe it has been frequently stated, in which to accomplish this purpose, certainly a day or two will not be valuable in its consideration. For the convenience of a number of Senators, I venture to suggest to the Senator from Ohio that we have an understanding that on Monday, if he thinks it is important that it should be Monday rather than Tuesday, some time during the day we shall take a vote on the bill. I know there are several Senators who mean to be heard upon the bill, and I would ask if Tuesday is not as well as Monday; and if Tuesday were fixed as the day, I would ask my friend from Connecticut [Mr. EATON] whether that would not, in his opinion, so far as he knows the views of Senators, give a reasonable time for such a debate as may be desired.

Mr. EATON. My own impression is that upon a great measure of this character there ought not to be any haste. This matter has twenty years to run; it would not make any essential difference if the bill were not passed at all this year or if it were passed next year rather than this. I would suggest that Wednesday or Thursday be fixed upon to take the vote as giving time enough, so that the measure may be thoroughly discussed, and then there will be ample time to explain our legislation and understand it well. I see no reason why the matter should be hurried in the way suggested by the Senator from Ohio.

Mr. CONKLING. Two Senators, the Senator from Connecticut [Mr. EATON] and the Senator from North Carolina, [Mr. RANSOM,] suggest Wednesday, and that suggestion I submit to the Senator from Ohio and ask him to hear a remark in connection with it. I have been told since I rose, and indeed I knew before, that several members of the Senate have gone or are compelled to go away between now and Monday, who will not be back before Tuesday, and possibly not before Wednesday next. I know also that they would be very glad to be here in reference to the vote on this bill; indeed I have made with one a conditional pair myself to answer his convenience, as he was hurried away and had no time to arrange affairs. I was

very reluctant, I confess, to pair on the bill, but I did it under the circumstances, saying that if a vote were pressed between now and Monday I would see that his vote counted by pairing with him myself. That is not agreeable to him, and it is not agreeable to me.

As the Senator from Connecticut says, and as I believe I said, I think a case can well be supposed in which a day or two of time is not important in the decision of the final question upon the bill. That such is the case the Senator from Ohio will admit, and I would suggest that that arrangement will save our remaining here for some hours and wearing out each other in attempts on one side to keep the Senate in session on Friday night, which is not a fortunate night for the purpose, and on the other side in attempts to defeat that purpose.

The Senator from Ohio knows also, without my referring to it especially, that a considerable number of members of both parties have taken to-morrow to attend an observance which it would be a little hard unexpectedly to attempt to deny to anybody who feels disposed to go.

Under all the circumstances, I hope the Senator from Ohio, either without a definite time being fixed or fixing some day agreeable to others, will not ask us to stay here longer to-day. If that suggestion is convenient to the Senator from California, he will retain the floor to continue his remarks when the Senate meets again, and we can now adjourn until Monday. The acceptance of this suggestion by the Senator from Ohio would enable him to do what he is always willing to do, and that is something very agreeable to the views of a majority of the Senate.

Mr. THURMAN. I understand the Senator from New York to say that to-morrow there will be a ceremony or something of that kind, or words to that effect.

Mr. CONKLING. Words to that effect.

Mr. THURMAN. He intimates that as Parliament adjourns for the Derby we ought to adjourn for that ceremony. I believe that ceremony is the launching of a ship.

Mr. CONKLING. If the Senator will allow me, I am sorry that he sees any similitude between a horse-race and the launching of a great ship that carries the flag of the country.

Mr. THURMAN. Undoubtedly my fancy is not as good as that of the Senator from New York, and he sees in the flag and the ship and all that a great deal that I would not see; and I and my friend from North Carolina [Mr. RANSOM] see a great deal more in a horse-race than he does. That is a western kind of fondness that I shall not deny. But all joking apart, I was going to say to the Senator that if he will let me launch my little ship to-day I am perfectly willing that he may go to see his big ship, with the flag flying, launched to-morrow.

Mr. CONKLING. But suppose the Senator sinks his little ship?

Mr. THURMAN. No Senator will say that I ever pressed him to sit a bill out, staying here all night. I never had charge of a bill yet that required me to do that, I must say; and therefore I can take no merit for not having done so. But I know this: that in nine years' experience here I scarcely ever have seen a hotly contested measure that we did not have to sit out. I have sat here many and many a time—sometimes when there were but seven or eight of us on our side—and helped to make a quorum and sat the whole night long that measures might be passed. We have no previous question and I hope we never shall have, at least while I am in the Senate; and therefore our only method is to sit a bill out or to do another thing which is attended

with very great inconvenience, and that is to fix a time at which a vote shall be taken. The great objection to that is this, as Senators know: if we agree that the vote shall be taken at a particular time without any reference to amendments that may be offered, then a Senator may offer the best amendment in the world and one that the Senate would see was the best if the mover had an opportunity to explain it; but his mouth is sealed, he cannot say a word to show its necessity or its propriety. On the other hand, an amendment may be offered that is the worst in the world, and which could be demonstrated to be so if a Senator could rise and expose its weakness or its vicious tendency; but his mouth is sealed and we must vote without any discussion or explanation whatever.

So we have been compelled from time to time, when we fixed a particular hour of a particular day to vote on a bill, to make an exception in favor of amendments, allowing a five-minute debate on amendments that should be offered; but that five-minute debate may run for ten or twelve hours, because you can offer as many amendments as you please. Any Senator can offer an amendment, and you can go on in that way and speak almost *ad libitum*. Therefore, practically I think I am right in saying that the experience of the Senate has been against fixing a particular time to vote upon any subject where there were amendments to be offered or where amendments were likely to be offered; and we are compelled to sit the bill out.

Now one word in reply to the remark of my friend on my right, [Mr. EATON,] that he saw no necessity of hastening this bill or pressing this bill in this way. I submit to him that there has been no undue pressure of this bill. Let us look for a moment into the facts——

Mr. SARGENT. I was on the floor and only gave way temporarily.

Mr. THURMAN. Just let me finish what I have to say; and I shall be but a minute or two. Let us look a moment at the facts. On the 10th day of July, 1876, now nearly two years ago, the Judiciary Committee of the Senate reported a bill in all its main features identical with the bill which is now before the Senate. The only difference is that the bill now before the Senate is not quite so exacting as was the bill reported at that time. I tried to get that bill up, having been charged with reporting it to the Senate, at that session. I could not get it taken up; it was toward the close of the session; the appropriation bills occupied time, and I was defeated in every attempt to get it up. At the next session, December, 1876, that bill was taken up and it was before the Senate, according to my recollection, for several weeks and underwent much discussion, but the incidents connected with the count of the presidential vote prevented any vote from being taken on the bill; but it was discussed. That was in all its main features just the bill we now have before us. On the second day of the last October session, on the 16th day of October, I introduced that identical bill and had it referred to the Committee on the Judiciary. Why it was not reported from that committee for a long time is a chapter of history that I do not care to go into; it is one that would not reflect much credit on some men who imposed on that committee. But so it was. The bill was at length reported on the 8th day of March, now nearly a month ago, and I gave notice that on the succeeding Monday I would ask the Senate to proceed to its consideration. The Senate did so, and it has now discussed this bill nearly four weeks; more than three weeks this bill has been under discussion. Now, four-fifths of the Senators—I think I am right in

saying—have spoken upon it. My own belief is that every Senator has made up his mind one way or the other how he will vote upon it.

Under these circumstances and after the very full and exhaustive arguments that have been made both upon the legal aspects of the case and upon the economical and the business aspects of the bill, it does seem to me that I am not obnoxious to any censure for asking the Senate to proceed with the bill.

Mr. SARGENT. Mr. President, I have no objection to going on and concluding my remarks——

Mr. CONKLING If the Senator from California will yield to me, I should like to make a motion.

Mr. SARGENT. I will do so after submitting some amendments to the bill, which I ask may be printed.

The PRESIDING OFFICER. The amendments will be received and ordered to be printed, if there be no objection.

Mr. SARGENT. I send to the Secretary's desk the following amendments to the bill, which I shall propose at the proper time. Let them be read.

The Chief Clerk read, as follows:

Strike out section 1.

Amend section 3 by striking out the last word on line 6, and lines 7, 8, 9, 10, and 11, and inserting in lieu thereof: "Interest on all sums placed to the credit of the sinking fund shall be credited, and added thereto semi-annually, at the rate of 6 per cent. per annum."

Strike out section 4, and insert the following in lieu thereof:

SEC. 4. That there shall be carried to the credit of the said fund, on the 1st day of March and September in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said railroad companies respectively, not applied in liquidation of interest; and, in addition thereto, each of said companies shall on said days in each year pay into the Treasury of the United States, to the credit of said sinking fund, such a sum as, with the said half of the amount earned by it as compensation for Government service, and the 5 per cent. of the net earnings payable to the United States under said act of 1862, shall amount in the aggregate to the sum of $1,200,000 per annum: *Provided*, That the amounts so credited and paid into said sinking fund each year, under the provisions of this section, shall not be less than $600,000 for each company.

Strike out section 5.

Mr. CONKLING. To enable the Senate (meaning a majority of the Senate) to determine whether it sees any reason for a session to-morrow or a night session to-night to struggle over the question whether this bill shall pass, if it is to pass, an hour sooner or an hour later, I move that the Senate do now adjourn until twelve o'clock on Monday next.

Mr. THURMAN. On that I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. MATTHEWS, (when his name was called.) I agreed with the Senator from Michigan [Mr. CHRISTIANCY] to pair with him on this bill until six o'clock. If my colleague thinks that that pair extends to this vote, I shall not vote.

Mr. THURMAN. I think it does, for this reason, that the Senator from Michigan knew perfectly well that we could not get to the final vote by six o'clock.

The PRESIDING OFFICER. Pending the roll-call, debate is not in order.

Mr. THURMAN. I know that the Senator from Michigan would vote "nay" if he were here.

The roll-call was concluded.

Mr. PADDOCK. Before the vote is announced I should like to understand whether the Senator from California still retains the floor.

The PRESIDING OFFICER. No debate is in order pending the roll-call.

Mr. SARGENT. I have not concluded my speech.

The result was announced—yeas 32, nays 31; as follows:

YEAS—32.

| | | | |
|---|---|---|---|
| Allison, | Conkling, | Ingalls, | Rollins, |
| Anthony, | Conover, | Jones of Florida, | Sargent, |
| Barnum, | Dawes, | Lamar, | Saunders, |
| Blaine, | Dorsey, | Mitchell, | Spencer, |
| Bruce, | Eaton, | Paddock, | Teller, |
| Burnside, | Ferry, | Patterson, | Voorhees, |
| Cameron of Wis., | Gordon, | Plumb, | Whyte, |
| Chaffee, | Hill, | Ransom, | Windom. |

NAYS—31.

| | | | |
|---|---|---|---|
| Armstrong, | Davis of Illinois, | Howe, | Merrimon, |
| Bailey, | Davis of W. Va., | Johnston, | Morgan, |
| Bayard, | Edmunds, | Kernan, | Morrill, |
| Beck, | Eustis, | McCreery, | Oglesby, |
| Booth, | Garland, | McDonald, | Saulsbury, |
| Butler, | Grover, | McMillan, | Thurman, |
| Cockrell, | Harris, | McPherson, | Wallace. |
| Coke, | Hereford, | Maxey, | |

ABSENT—13.

| | | | |
|---|---|---|---|
| Cameron of Pa., | Hoar, | Matthews, | Withers. |
| Christiancy, | Jones of Nevada, | Randolph, | |
| Dennis, | Kellogg, | Sharon, | |
| Hamlin, | Kirkwood, | Wadleigh, | |

So the motion was agreed to; and (at five o'clock and four minutes p. m.) the Senate adjourned until Monday next at twelve o'clock

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APRIL 8, 1878.

* * * * * * *

THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, the pending question being on the amendment submitted by Mr. CHAFFEE.

Mr. SARGENT. Mr. President, when the Senate adjourned on Friday last I was discussing the question of the great annual saving to the Treasury that had been caused by the construction of the Pacific railroads, and showed it by the report of the Senate Committee on Railroads made in 1871. It was a principal object of the legislation of 1862 and 1864 to gain that advantage to the Treasury, and I contended that we ought not to overlook the fact that that object was secured and millions less annual expense have ever since been incurred, in deciding upon the treatment to be meted out to the companies. The Railroad Committee estimated that saving as at least $3,000,000 per year on the scale of expense when the roads were commenced, but as the expenses annually became greater as the country became settled up, the Indians became more troublesome, mails heavier, &c., the annual saving became still more and probably reached nearly $6,000,000

annually. In 1867 a single contract to carry that part of the Pacific mails not carried by the Isthmus was made for the space between the advancing termini of the roads, which it was supposed had years to run, at the rate of $1,750,000 per annum. Forty or fifty times that weight of mails is now carried over the same distance for $140,000 per annum. From the facts I have cited in this connection it may be safely asserted that the Treasury will be better off in 1900 from the savings to the Government even if the debt is never paid. It is better off to-day. The speedy completion of the road added greatly to its cost to the companies, but it more quickly relieved the Treasury of enormous drains for transportation. The men in Congress who favored the passage of the Pacific Railroad bills, and argued in favor of the "inducements to capital and enterprise" to embark in the enterprise, looked upon the Government investment as a good one even if the bonds or interest were never paid.

No fact is more apparent from a perusal of the debates in 1862 than that it was not contemplated that either the bonds or interest should be paid until the maturity of the bonds.

And I am led to this remark by the position taken by the Senator from Delaware [Mr. BAYARD] in the remarks which he recently addressed to the Senate. Referring to a quotation from Justice Buller, used in the case of the United States *vs.* The Pacific Railroad, in 1 Otto, 85, he expressed the opinion that the failure in the former legislation to provide for the payment of the interest by the companies to the Government as it was paid by the Government was a *casus omissus*. The quotation which he read as I recollect—I am sorry I am not able to verify my recollection by his remarks, which are not yet in the RECORD—was as follows:

"We are bound," said Justice Buller in an early case in the King's Bench, "to take the act of Parliament as they have made it: a *casus omissus* can in no case be supplied by a court of law, for that would be to make laws; nor can I conceive that it is our province to consider whether such a law that has been passed be tyrannical or not."

I do not understand that the object of the court in making the citation was to express even an opinion that there was a *casus omissus* in that case. Perhaps they were not at liberty, as we are, to refer to the debates at the time of the passage of the act in order to understand whether such omission was made or not; but there is nothing clearer to any one who will refer to these debates than that Congress intelligently left out any provision for the payment of the interest by the companies as it was paid by the General Government. This was so necessarily as a matter of principle; for what assistance would it have been to the companies for the Government to lend them its bonds to be paid by the companies at maturity and the companies each year to pay all the interest that accrued on these bonds? It would be no advantage whatever that anybody can see. The companies could just as well borrow, if they could borrow it at all, from somebody else on those terms. It was a loan of its bonds by the Government and not an indorsement of the bonds of the company. I desire to call attention to an amendment offered by Mr. White, of Indiana, in the House of Representatives in 1862 upon the opposite theory which he prefaced by saying:

It will be observed by reference to the section that there is no provision in reference to the payment of the current interest. I therefore move to amend by adding to the section the following.

And then comes the section which he offered:

It is declared to be the true intent and meaning of this section that the current

interest on said bonds shall be chargeable to said company, to be by them reimbursed to the United States within one month after each semi-annual payment thereof by the United States; and a default therein shall subject the said company to the same liability and forfeiture above provided for in case of the non-redemption of the bonds at their maturity.

It will be observed that this amendment was aptly drawn for the purpose of supplying the omission if there was a *casus omissus* in the bill up to that time, and he gives his reasons further for offering this amendment:

The section as it now stands does not make any provision for the payment of the current interest as it accrues semi-annually. It may or may not have been the intention of the committee that the interest should be paid by the company. Probably it was; but if not, then this amendment, of course, will involve a principle which the committee have not sanctioned. If it was the intention of the committee, and it is the intention of the Committee of the Whole, that the railroad company shall pay the current interest, then, to avoid the difficulty and uncertainty which creditors will have, and to insure its prompt payment by the United States, this amendment provides that the Government shall first pay it, and the company reimburse it to the United States within one month. Of course, it will be a little gain of the company, to the extent of the interest upon the interest.

A wonderfully small gain that would have been! I am tempted to use the favorite Latin maxim of my friend from Ohio, *de minimis non curat lex.*

This is the only way the interest can be promptly secured to the creditors.

To this Mr. Campbell, of Pennsylvania, who was chairman of the Pacific Railroad Committee in the House, replied:

I suppose, of course, that the gentleman from Indiana is acting in perfect good faith, but I am clearly of opinion that the gentleman has not studied faithfully the provisions of this bill. It has been demonstrated to this House that the cost to the Government of transportation to our forts in the Territories is more than double the amount of the entire interest upon all the bonds proposed to be issued, and the bill is based upon the supposition that the transportation of Government supplies over the road will be equal to, if not greatly exceed, the annual interest upon the bonds issued from year to year. It is not the intention of the bill that the interest shall be paid semi-annually to the Government. It is not supposed that, in the first instance, the company will reimburse the interest to the Government. It will reimburse it in transportation, but if the transportation does not meet the interest, then the Government is to have a mortgage on the entire road for the full amount of principal and interest. I hope, therefore, that the amendment will not pass.

Mr. WHITE'S amendment was rejected, and thus there was an intelligent vote by the House of Representatives, after argument *pro* and *con*, that this was not a *casus omissus*, that they would not supply a provision requiring the interest on these bonds to be paid before maturity. I could quote still further from these debates remarks made by Judge KELLEY, of Pennsylvania, and other remarks by Mr. CAMPBELL, and some submitted by myself at that time, all explaining this same feature of the legislation, showing that the House of Representatives clearly understood that the provision was that the Government should pay the interest, but the companies should repay the interest only at the maturity of the obligations and at the same time that they paid the principal.

The Senator from Ohio [Mr. THURMAN] and others have dwelt upon the enormous amount of the debt of these companies to the Government. Taking the decision of the Supreme Court as correct, as we must, the interest is not payable, and neither is the principal, until the maturity of the bonds. That was, as I have shown, a boon to the companies, intelligently and purposely given. It is therefore necessary, in estimating the present real amount of the debt, to ascertain its present value. I have had this done by an able statistician in the Treasury Department. By his showing the present value (July 1, 1878) of the net interest (or interest less estimated 5 per cent. of net

earnings and the half transportation) for thirty years, (from January 1, 1868, to January 1, 1898,) such net interest being considered as due at maturity of principal, (January 1, 1898,) or the sum, which reinvested semi-annually at the rate of 5 per cent. per annum from July 1, 1878, to January 1, 1898, will amount to such net interest, is, in the case of the Union Pacific Railroad Company, $11,842,000; Central Pacific Railroad Company, $15,128,000.

If at the rate of 6 per cent. per annum such present value is, in the case of the Union Pacific Railroad Company, $9,794,700; Central Pacific Railroad Company, $12,503,000, the present value of the principal and such net interest together, under the above conditions, when the annual rate of interest for the semi-annual reinvestments is 5 per cent. per annum, in the case of the Union Pacific Railroad Company, is $22,228,000; Central Pacific Railroad Company, is $25,761,000.

If the annual rate is 6 per cent., such present value is, in the case of the Union Pacific Railroad Company, $18,394,000; Central Pacific Railroad Company, $21,308,000.

These figures, which, as I say, were prepared for me by an able statistician in the Treasury Department, removed from any motive for misrepresentation, and I have no doubt with actual verity, show the small present value of this debt compared with the exaggerated statements which are made in regard to it. The companies would have a right to pay it off under proper legislation by Congress, giving the full value of it at the rate which I have just stated.

When the Pacific Railroad bill passed the House of Representatives, after a discussion that ran over several weeks under the five-minute debate and a discussion under the hour rule of several weeks, as it came to the Senate it did not provide that these companies should pay either principal or interest except by the whole of the transportation and the 5 per cent. of their net earnings, and the words were inserted in the Senate on the motion of the then Senator from Vermont, Mr. Collamer, that they should "pay said bonds at maturity." The theory of the House of Representatives really was that a substantial boon was to be given to these companies in order to induce them to overcome what were admitted to be enormous difficulties in the way of their undertaking and to overcome the lethargy of capitalists; but the Senate took a more stringent view of the matter and required that the bonds should be paid at maturity. Upon that head I should like, to show the theory upon which the House went, to read a short extract from a speech made by Mr. White, of Indiana, from whom I quoted a few moments ago. The proposition pending was that the Government should have representation upon the board of directors, an amendment moved by him. Upon that he says:

> I now submit the second amendment indicated by me in respect to the Government being represented in the board of directors. I will take this opportunity to say that it is very true that this bill does provide for the repayment of these advances by the Government.

The method of that repayment was, as I have stated, by means of the transportation and the 5 per cent. of net earnings until after the bill had been considered in the Senate, where it was made more stringent.

> The gentleman from California lays stress on his objection, especially upon that fact, and for that reason he objects to providing for Government directors. Now, sir, I contend that although this bill provides for the repayment of the money advanced by the Government, it is not expected that a cent of money will ever be repaid. If the committee intended that it should be repaid, they would have required it to be paid out of the gross earnings of the road, as is done with the roads

in Missouri, Iowa, and other States, and not the net earnings. There is not perhaps one company in a hundred where the roads are most prosperous that has any net at all. I undertake to say that not a cent of these advances will ever be repaid, nor do I think it desirable that they should be repaid. This road is to be the highway of the nation, and we ought to take care that the rates provided shall be moderate. I think, therefore, that this will turn out a mere bonus to the Pacific Railroad, as it ought to be. The Government, then, ought to be considered as having an interest in the road, and it should have a voice in the management of its affairs.

That shows the temper of Congress at that time.

Mr. EDMUNDS. May I ask the Senator what book he is reading from, and what page, so that I can look at it?

Mr. SARGENT. Yes, sir.

Mr. EDMUNDS. Or will the Senator just give me the book?

Mr. SARGENT. It is the Congressional Globe, part 2, 1861-'62. I will hand the Senator the book containing the extracts from the Globe.

Congress, however, did not assent to the idea that this should be a mere gratuity. Anxious as I was at that time for the passage of legislation that would build the Pacific railroad, enthusiastically anxious as I was, bringing to bear upon it whatever of strength and courage under great difficulties which I possessed, still I did not think it should be a gratuity. I believed that the time would come when there would be a dozen States intervening between the Pacific border and the Missouri River; that the Territories would be rapidly developed by means of this very road; that an immense business would grow up which would be very prosperous; that the net earnings provided for in the bill would amount to a very large sum; and that the transportation for the Government, which at that very time amounted to about $8,000,000, would still amount to a very large sum, and that the Government would have wisdom enough, instead of sending its goods by Panama and paying all cash, as it has done since that time, because it might get transportation a cent or two a ton cheaper, although it would consume much more time and run greater risks; I believed that these resources would keep down the debt, and that when it became due it would be within such compass that the roads thus prosperous, doing such business, would be able to repay it; and therefore I was in favor of the 5 per cent. clause, and of applying all the transportation. And I desire to say here and now that it was my judgment in 1864, when I noticed the debates in the House of Representatives, of which I was not then a member, having gone out of my own volition at the close of the previous Congress, that I did not then think, and do not now think, that I ever would have voted to double the land grant or take off half the transportation from present application to the interests on these bonds. However, it was done. The Court of Claims said a bargain was made. It was "an improvident bargain," but you must stand by it; and such I take to be the spirit of the Supreme Court in that matter.

The only conclusion I draw from the saving to the Treasury by the aid that has been extended to these roads is that it should not now legislate as if it had been mere gratuity, and not mutually advantageous, though there has been profit in both the construction and operating the roads. I do not aver that a sinking fund of an adequate character should not be secured. I think it should be, and I believe the prospect of congressional hostility and endless, expensive litigation will induce the companies to assent to whatever comports with the wants of the Government, which require not only the repayment of principal and interest, but the maintenance of a first-class road. I believe the companies have made large gains in building the

roads and now find the operating of them profitable. Out of these profits they should pay a proper annual sum, besides that reserved by the original legislation, to put their debt in the process of ultimate extinction. This is to the benefit of the credit of the companies and just to the Government. It could not reasonably be asked, if there were no profit to them in their enterprise, and it ought not to be pressed to such point as to take away all prospect of future profit. If that is done the owners of the roads will be apt to get out from under the burden of maintenance and let the Government do its will with the roads; and for many reasons that is undesirable. The attention of Congress has been repeatedly called to all the features of the Credit Mobilier of the Union Pacific and to the Contract and Finance Company of the Central Pacific, although the latter was very different in its characteristics and never gave or sold its stock to Congressmen. I called the attention of the Senate some years ago to the latter and offered in the House of Representatives the resolutions of censure which were passed upon the former. But Congress has seen fit to condone whatever was wrong in either, and in consequence of that condonation other parties have invested in both the stock and bonds of the company. It is not now just to either the old or new parties to make matters so condoned the excuse for measures that may imperil the proper maintenance of the roads, take away all object to attend diligently to their affairs, or make them too heavy a burden on transportation.

Mr. THURMAN. Will my friend allow me to interrupt him a moment to understand his remark? What does he say Congress has done?

Mr. SARGENT. Congress investigated at very great length all the matters in connection with the Credit Mobilier, the result of which was certain resolutions of censure on parties now dead. It never took any steps upon that matter in any way or shape for the benefit of the Government.

Mr. EDMUNDS. It passed a bill to institute a suit.

Mr. THURMAN. And the suit is pending now.

Mr. SARGENT. I say Congress never took any action toward the forfeiture of the rights of these companies, as was provided for by the original legislation in case of the violation of their faith with the Government; and not having done so, they ought not to make these things now an excuse for varying a bargain to the injury of these parties and upon the strength or assertion of legislative will.

Mr. THURMAN. Because Congress did not exercise its extreme right of repealing the charter, which it might have done according to the report of the committee, and I think a very correct report, but saw fit to take a more mild course, the institution of a suit to compel these people to disgorge what the committee reported were ill-gotten and illegal gains, and that suit is now pending, my friend ought not to say that Congress has ever condoned those offenses.

Mr. SARGENT. My recollection of that suit is that the money is to be paid back, not to the Treasury of the United States, but into the treasury of the Union Pacific Railroad Company. So far as itself was concerned, the Government condoned these offenses, if they were offenses, and upon exactly the same principle that offenses are considered condoned in every divorce court in the land, and wherever the principle of condonation is applied. Subsequent dealings with the companies, subsequent association, cohabitation with the companies, if you see fit, worked the condonation to which I referred.

By as plain a stipulation as any in the contract Congress provided

that it would not reduce the rates of travel and transportation unless the profits of the corporations exceeded 10 per cent. annually. In view of that provision Pacific commerce is likely to be beyond the relief of Congress when to the present demands on the company are added several millions of annual payments to the Treasury, which must soon exhaust any previous accumulation of profits, and become a serious charge on the transportation of freight and passengers. On behalf of the people of the Pacific, and of the Territories traversed by this road, I protest that under the claim of protecting the Government you do not impose too heavy burdens on their commerce. That which is exacted beyond a reasonable limit comes solely from the people of those States and Territories. If the rates are too heavy through business will take the route by the isthmus, a gain perhaps to New York, which will have the benefits derived from the flush days of Panama and Pacific-Mail steamer traffic, but the Iowa roads and Chicago will suffer proportionably. But local business cannot help itself, and will be crushed down; the shipment of low-grade ores, the running of slightly productive mines and general prospecting will be stopped from the enhanced cost of transporting machinery and supplies. So far as this legislation affects California I claim the right to speak freely and to be heard. All the States get the benefit of reduced cost of Government transportation of mails and Government troops and supplies, this reduction exceeding by two millions annually the whole amount of yearly interest, with security against costly Indian wars, and the benefit of peace in the center of the continent. In case of foreign war the benefit to the nation of the Pacific Railroad in facilitating the defense and preservation of its Pacific possessions will be incalculable. In this view it is equitable that the entire nation, and not California alone, should bear the load until the development of the interior, the creation of new States along the line of the road, and the increase of business consequent thereon enable the Pacific roads to carry out the original intention of Congress, and discharge their obligations "at maturity;" and if further arrangements are to be made by which the burden is to be localized, and put upon a State principally that has but about one-seventieth of the population and 2¾ per cent. of the property of the United States, the measure should look rather to gradual reduction of the debt and its ultimate security, than to rapid payment from a mere desire to punish the companies. It is better to give a longer time to pay the great debt rather than arrest development of the Western States and Territories, destroy the roads, or make them a burden rather than a blessing to the people of the Territories and the Pacific.

But while I ask this forbearance toward the Pacific States and intervening Territories I am willing to exact justice from these railroad companies to the Government. It was plainly named in the original contract that 5 per cent. of the net earnings and the whole amount for transportation for the Government, subsequently reduced to one-half, should be applied as fast as earned upon the interest and principal of the bonds. I do not believe in any funding scheme that will eliminate that feature from the contract. That money belongs to the Government as much as any other that can be paid into the Treasury, as the proceeds of taxation or otherwise, and should be employed to extinguish this Pacific Railroad debt so far as it will go, and not be put into a sinking fund, which would compel the Government to pay interest upon its own money. I have all along considered this as a serious defect of the Railroad Committee's bill. But the other half of the transportation should go into the sinking fund

and draw a reasonable rate of interest, compounded at reasonable intervals, because neither the debt nor the interest upon it is now due or payable or collectible by the United States. And to this should be added such a sum, to be paid regularly by the companies, as will bring their debt to the Government within moderate control in 1900. I do not think that we should exact 10 per cent., or 25 per cent., or 50 per cent. of their net earnings, refusing to allow them any profit for running the road unless they can derive it from the percentage left of the net earnings. There is, however, much in the criticism of the Senator from Ohio, [Mr. THURMAN,] that with a possible increase of the amount of transportation done by the companies, &c., the amount of money over and above that might decrease the sum which the companies would be required to pay from other sources to almost nothing. In the amendment which I have submitted to section 4, I propose that the amount to be credited and paid into the sinking fund each year shall not be less than $600,000 for each company, and it may be as high as the highest amount of money named in the Judiciary Committee's bill, if the 5 per cent. and half transportation do not make it up to that sum.

I object to the first section of the Judiciary Committee bill for reasons which I have heretofore given, and have moved an amendment to strike out that section. I think it is unjust and harsh, needlessly so. I further cannot see the propriety of submitting to the Supreme Court the question "what are net earnings?" to ascertain this judicially, as they will soon do, and then lay down a congressional rule which may be a departure from that decision and from the contract with the companies originally made and against their will.

I think section 3 should be amended by striking out lines 7, 8, 9, 10, and 11 and inserting in lieu thereof the words "interest on all sums placed to the credit of the sinking fund shall be credited and added thereto semi-annually at the rate of 6 per cent. per annum," and I have moved such an amendment. It is true the Government can now borrow money at a less rate than 6 per cent., but money is worth more than 6 per cent. to these companies and to business men. The Government gets money low because its bonds are exempt from State and national taxation. But the obligations of private parties have no such privilege, and the value of money to them is not to be fairly measured by its value to the Government. I insist in this connection as in others, that the rights and interests of the companies are to be considered as well as those of the Government; for they are parties to a contract with the Government, binding in law and conscience. If the legislative will can set that aside it can set aside any other contract, and the national debt can be lawfully repudiated, especially such portions of it as are held by national banks, or other corporations created or contracted with by the Government. At such doctrines "reason stands aghast and faith herself is half confounded."

One feature of this discussion is remarkable. The members of the Judiciary Committee have so much apparent pride of authorship or opinion and bring so much heat and zeal into the advocacy of their bill that anything like accord or consultation seems impossible. Propositions of amendment or dissent seem to be resented as personal aggression. In fact it is whispered that no amendments of any character, not emanating from the sponsors of the measure, are to be allowed, but are to be voted down, no matter by whom else proposed and independently of the merits. This is not the temper in which legislation should be conducted, and is not likely to secure accuracy or justice. The purpose will not succeed unless the Senate is ready

to admit the omnipotency of the Judiciary Committee, and that the omnipotency claimed by that committee for Congress resides wholly in that worthy and industrious committee. While according to them all the purity of motives that they can claim and admitting their great ability, I cannot and will not blindly follow them where the good faith of the Government, in my judgment, is concerned, as well as the interests of the people of California and the Territories.

Mr. BLAINE. Mr. President, I gave notice last week of an amendment which I intended to offer, and I now formally move the following: In section 12 of the bill of the Judiciary Committee strike out all after the word "mentioned," in line 4, and insert in lieu thereof:

But so long as said Central Pacific and Union Pacific Railroad Companies shall faithfully comply with the provisions of the said acts of 1862 and 1864 and of this act, relating to payments to the United States on account of the bonds advanced, and of the sinking funds to be established as aforesaid, such compliance shall be deemed and taken as sufficient to meet the obligations of said companies on account of such bonds prior to the maturity thereof.

I do not know, Mr. President, that there is any particular choice where this provision should come in. I happened to put it in just at that point, because it seemed to come in connectedly. I do not know that I have any particular preference, however, to having it here rather than putting it in at the end of the section. If it should commend itself to any person more by having it put at the end of the section than at the point where I have moved it, I shall be very glad to make the change. I do not think it really interferes with the point I desire to cover by my amendment as to which particular place it comes in.

I had a little conversational interchange with the honorable Senator from Ohio who has charge of this bill [Mr. THURMAN] on Thursday last in the Senate, in which the following took place:

Mr. BLAINE. Well, the Senator voted in 1871 to make it—

The other half transportation—

payable to the railroad companies, and in 1873 the question came up and then he voted to let them have it decided in the courts.

Mr. THURMAN. I do not know whether I voted for that at all. I do not remember whether I was in the Senate when the act of 1873 was passed.

Mr. BLAINE. The Senator spoke in favor of it anyway.

Mr. THURMAN. I do not think I said a word about it.

I thought as I had recently read the debate over I could not possibly be mistaken. I have since looked up the matter and I find that there was a debate covering some thirty-eight columns of the Globe and that my honorable friend from Ohio appeared in that debate I think thirty-two times, covering about seven or eight columns of the Globe in what he said. The Senator from Ohio speaks so well and so easily that I can well conceive that, as the man who would overlook a million-dollar check, so vast was his fortune, he might well forget a very important utterance that was five years old; but it was fresh from the reading of that debate that I ventured to offer the amendment which I have now formally moved to the twelfth section of the bill, and it was after all the instruction which I derived from what the honorable Senator from Ohio had said that I framed that amendment.

I had conceived, as I ventured to remark, that whatever settlement might be made by Congress with these railroad companies, whatever in the judgment of Congress was a fair and a right thing to do, it ought to have somewhat the element of permanency in it. And I ventured to point out that in my judgment if we pass this bill of the Judiciary Committee just as it is, reserving in it the strongest possi-

ble right to alter, amend, and repeal immediately, or in eight months if you choose, or in a year if you choose, as the Senator from Vermont [Mr. EDMUNDS] admitted might be done, it was impossible to have $90,000,000 of a speculative stock under a still larger amount of bonds of various descriptions and denominations, subject at all times to whatever action Congress might choose to take in regard to it, with Congress threatening to take action at any time—it was impossible, I said, to prevent Congress being used or attempted to be used by Wall street and by speculators and by stock-gamblers to influence the value of stock and bonds either favorably or unfavorably, and I believe that to be the most serious evil of this bill.

I do not claim any originality for that conception, because I read from the honorable Senator from Ohio in 1873 in this debate in which he forgot that he had taken any part whatever. It is said in the Arabic proverb the speaker is one, and the hearer is another, and the reader a third, and he that most easily forgets is the speaker. The Senator says on page 874 of the Congressional Globe, part 2, third session Forty-second Congress:

> Now it is admitted on all hands that there ought to be some judicial decision of this question, and I agree that there ought to be. The interest of the Government requires that there should be, and the interest of these companies requires that there should be, for this matter ought not to be at loose ends in this way. What was the effect of its being at loose ends before?
>
> Mr. ALLISON. Who said that?
>
> Mr. BLAINE. The Senator from Ohio.
>
> Mr. ALLISON. On what question?

Mr. BLAINE. It was on the question of referring to a court the matter of half transportation. I have stated that the honorable Senator in 1871 concurred in a report from the Judiciary Committee affirming that it belonged to the companies, and then that the honorable Senator took the ground in 1873 that it should go to the courts for decision, and in urging the passage of that bill the Senator from Ohio said what I was reading. I resume the quotation from his remarks:

> The interest of the Government requires that there should be, and the interest of these companies requires that there should be, for this matter ought not to be at loose ends in this way. What was the effect of its being at loose ends before? I saw a statement the other day, and I believe it is correct, that when this decision was made by the Secretary of the Treasury not to pay the one-half transportation, the stock of the Union Pacific Railroad went down to 9 per cent.—nine cents on the dollar. After the decision by Congress that it should be paid, that same stock went up to thirty cents on the dollar. The Senator from Nevada [Mr. Stewart] nods his head. He is more familiar with the facts than I am. I saw that statement the other day in what appeared to be an authentic form. Thus it will be seen that the stock-gamblers were enabled to speculate in that stock to the amount of twenty-one cents' profit on an investment of nine cents; on an investment of nine cents to make twenty-one cents profit. It seems that there is nothing that concerns this company that is not the subject of immense stock-gambling and stock speculation and unlawful profit. That was the effect of tampering with the thing before? Now, I do not wish to have any more tampering with it, if I can help it. What I want is what the Senator from Vermont wants, a speedy decision, both for the public interest and for the interest of everybody who is concerned; and the question is, how is that speedy decision to be arrived at?

It was directly after reading that, taking my instruction, as I am always glad to do on matters that are not partisan, from the honorable Senator from Ohio, that the amendment which I have offered suggested itself to me. He pointed out the evils of having stock-gambling in this matter; he pointed out that you could not have any legislation going on about this, but it was immediately the subject of "immense stock-gambling" and "unlawful profit." He said it

should not be left "at loose ends;" he said that he was opposed to "tampering" with it, and that there should not be "any more tampering with it if he could help it." He wanted to close the whole door on matters of that kind. I derived my amendment from that position and from those remarks of the Senator and I was immensely surprised when the honorable Senator himself—I know it was from a total forgetfulness of what he said in 1873—came forward and opposed my amendment, and I believe intimated that he would rather lose the bill than to have incorporated into it the exact doctrine which he so forcibly put five years ago.

Mr. THURMAN. Which the Senator thinks I put, but which I did not.

Mr. BLAINE. I have not interpolated nor changed a solitary word the Senator said. The Senator spoke of the evils of having [illegible] or "at loose ends;" he spoke of the evils of leaving it open to "stock gambling" and to "stock speculation," and that we could not do anything about this road that was not immediately the subject of "stock gambling operations;" he spoke of the great evils of "tampering" with it, using that very word, a most significant and expressive word. Now if the Senator himself sees any difference in that meaning from that which I quote, I should be glad to hear him explain it, [illegible] to any other possible meaning. I should be glad to hear it.

Mr. THURMAN. I have not one word that I then said to take back. I stand to-day by every word that I then said; but it has no application to this bill in my humble judgment, though it has the application, doubtless, of my friend from Maine, that the matter [illegible] back.

Mr. BLAINE. I do not think the Senator would have [illegible] when I read it.

Mr. THURMAN. I did.

Mr. BLAINE. I think the Senator's forgetfulness of what he said in 1873 when he said he did not take part in the debate at all because, [illegible] at this moment, because the very opposite [illegible] every one that I offered, every one on which [illegible] was carefully put out and excluded in the shape [illegible] which I read from the Senator's own speech. In that debate the Senator from Ohio said [illegible] it unchanged, and I would not passage the passage [illegible] my amendment that the object was to make a [illegible] according to the Senator from Ohio, was to [illegible] to make the road in the ground; it was the [illegible] speculating operations. Now, if there is [illegible] [illegible] the Senator from Ohio and myself [illegible] the Senator from Ohio [illegible] [illegible] [illegible]

that restriction and speaking from that restricted stand-point of no power to interfere with the contract the Senator found these great dangers lurking. With Congress having a power so narrow and so limited and so restrained as the honorable Senator then seemed to infer it possessed he saw these great evils of stock-gambling and stock operations and everything of that evil character besetting legislation. Now I ask him to reflect what will be the character of that when it goes forth that on every feature of this legislation, on every single section, paragraph, and line and period of the acts of 1862 and 1864, the power of Congress is ample to step in at any moment and change, alter, amend, repeal, or destroy as they please. Why you have given a thousand inducements for interference from outside to where one existed before. You have given a thousand temptations to stock-gamblers. The Senator then found that the stock-gamblers could make a profit of twenty-one cents on an investment of nine cents.

Mr. THURMAN. Will the Senator allow me a question?

Mr. BLAINE. Certainly; with great pleasure.

Mr. THURMAN. Is not the power to amend, alter, or repeal now in the charters?

Mr. BLAINE. Yes.

Mr. THURMAN. Is it put any more in the charters by the Judiciary Committee bill than it is now in the charters?

Mr. BLAINE. I am talking of how the Senator then construed it.

Mr. THURMAN. No matter about that. The Senator is speaking about some better foundation for his amendment than what a Senator said, I think.

Mr. BLAINE. There could not be a stronger one than is found in what the Senator said. I could not possibly have a stronger one than the Senator gave me.

Mr. THURMAN. The Senator is putting it on the ground of the danger of stock gambling and the like, and that arises from the fact that the charter is subject to amendment or repeal. I ask him if it is not now subject to amendment or repeal?

Mr. BLAINE. The Senator probably does not understand me aright. Let me make myself intelligible.

Mr. THURMAN. Is not the power to alter and repeal in the law now?

Mr. BLAINE. Certainly; but allow me to make myself intelligible. At that time the Senator from Ohio had not taken the cross-cut and the near track of outrunning any possible judicial decision by simply substituting an act of Congress.

Mr. THURMAN. Because there was no such question before Congress.

Mr. BLAINE. Nor did he ever intimate in that debate that such a question could come before Congress; never. In that whole discussion, participated in by the Senator now chairman of the Judiciary Committee, [Mr. EDMUNDS,] by Senators remarkable for their legal ability and legal experience on both sides of the Chamber, including on the opposite side the honorable Senator from Ohio himself, *primus inter pares*, there was never an intimation of the power which the Senator says now is so plain and palpable that no person disputes it; and at that time, I want to ask the honorable Senator what in the world was the sense of asking the Supreme Court of the United States, the highest judicial tribunal we have, to decide whether the half transportation should be retained or paid out; what was the sense of waiting eighteen months or two years for a judicial investi-

gation and decision, if at a single bound of the legislative will you could settle the whole thing?

Mr. THURMAN. Does the Senator want an answer now?

Mr. BLAINE. Yes, I will take it now.

Mr. THURMAN. Because if the Supreme Court had sustained the opinion of the Attorney-General, that the Government had a right to set off the interest which the Government pays against the half transportation which by the act of 1864 we agreed to pay to the companies, then no legislation could have been necessary upon the subject of the half the transportation at all, for the right of set-off would have settled that whole matter. Therefore it was perfectly right that we should ascertain what was the opinion of the Supreme Court of the United States upon the law as it then stood. That being ascertained, we could prepare such appropriate legislation as might be necessary.

Mr. BLAINE. Ah! but the Senator already had the opinion of the Attorney-General, and by a single statute he could have secured to the United States the money to which it was just as much entitled then as it is to-day.

Mr. DAWES. The committee differed with the Attorney-General.

Mr. BLAINE. The Attorney-General's opinion, to be sure, differed, and the Senator from Ohio overrode the Attorney-General's opinion. There was the opinion of the law officer of the Government that we were entitled to half the transportation; the Secretary of the Treasury was retaining it, and the Senator from Ohio lent his powerful name and powerful aid to the overthrow of that decision, and to the order that that money should be paid back to the companies. Two years later he changed his ground, and said upon the whole he would refer that to the court. Then he referred it to the court, but two years after he said, "We will not abide by the decision of the court." In the first place the Attorney-General said that the companies were not entitled to it, and the Senator from Ohio said they were. Then he agreed to submit it to the court, and the court said they were entitled to it, and now he says they are not entitled to it.

Mr. THURMAN. Do I say they are not entitled to it?

Mr. BLAINE. In this bill.

Mr. THURMAN. There is nothing in this bill which says they are not entitled to it, unless you alter the law.

Mr. BLAINE. Ah, unless you alter the law! That brings me back to the original question. If this power was then, in the mind of the Senator from Ohio, so ample and conclusive and absolute that all you had to do was to write and it was done, why all this delay? Why did the Senator speak with such gravity and with such seriousness as to the effect of a judicial decision if the judicial decision was not to be worth anything more than the paper on which it was printed? Where was the point? The point of my amendment is to relieve the Congress of the United States, and the Government and the companies of just the evils which this change has wrought, as the Senator from Ohio himself stands as the most illustrious example. In seven years the Senator from Ohio has occupied four different positions on this question. Four different positions as to the legislation necessary, the Senator has held in seven years! I am very sure that, if this bill passes as he supports it, with the power to alter, amend, and repeal, with every invitation for everybody to come in and demand it, you will find some person, not probably so eminent as the Senator from Ohio, but even more changeable, I think, who will change seven times in four years, and we shall have the thing repeated indefinitely. It

will be shuttlecock and battledore between the two Houses, between Wall street and Congress. It will be a perpetual and never-ending agitation upon the question. Now, what is the necessity of this? The bill of the Judiciary Committee, as I intimated, does not in my judgment ask of the railroad companies more than they are able to pay. I do not think it asks any more than we have the right to demand of them. I do not think that the bill would be in its amount an oppressive one upon the railroad companies, and it is so adapted that it forms a sliding scale. They have adopted a sliding scale of 25 per cent., so that the more of net earnings the companies make the more the Government will get. The Senator from Ohio has spoken I believe publicly, he has very freely in conversation, to the effect that the operation of the bill would leave about $20,000,000 due from each company at the maturity of the bonds. If that be true, what is the need of our saying that we reserve the power to interfere every year?

Mr. EDMUNDS. We do not say it.

Mr. BLAINE. Then why keep the power all the time?

Mr. EDMUNDS. Because the power is requisite always in such a case.

Mr. BLAINE. That is stating that the world is round because it is round.

Mr. EDMUNDS. And that is the very reason why the world is round.

Mr. BLAINE. I want now to go into a little calculation, and I do this for the benefit of my friend from Wisconsin [Mr. HOWE] who sits next to me. If the Senator from Ohio (and I have taken his figures implicitly) is correct, there will, under the operation of this bill, be $20,000,000 remaining of Government mortgage and $27,000,000 of the first-mortgage bonds on the Union Pacific Railroad when the bonds mature. I take the two railroads apart, and am speaking of the Union Pacific. I believe the Central is regarded as a still stronger corporation. There will be at the end of the mortgage $47,000,000 due on the Union Pacific. Does my friend who sits near me have any doubt that they will be able to pay that amount?

Mr. HOWE. I doubt whether they will.

Mr. BLAINE. The Senator doubts whether they will pay it. Now let me give just one little calculation. The Union Pacific Railroad Company is to-day paying more than 6 per cent. on $90,000,000 and there are ahead of you twenty years of increase and development of business, and a road to-day which, with all its obligations of first-mortgage bonds, of sinking-fund bonds, of land-grant bonds, and of stock, is absolutely showing net earnings enough for a dividend on $90,000,000—cannot that road be trusted to pay $47,000,000 with twenty more years added of development and increase of business and enlarged connections in all directions? If this bill does not give the absolute security to the Government for every solitary dollar that it ever laid out upon it, then it is entirely impossible for the wit of man to devise absolute security. By the time the bonds mature, according to the ordinary development of the country and especially of the new country, with its varied and various interests, through which that road runs, the fair presumption would be that its intrinsic value would at least be double what it is to-day. The fair presumption I say is that it would be double. There is not a banker in London or New York, there is not a financier on either continent who would not accept that as absolute security and come under any amount of obligation to anticipate its bonds for a proper consideration.

Therefore I say that the Judiciary Committee, having provided

according to their own claim for the absolute repayment and security to the Treasury of every dollar that the Government has advanced, are yet unwilling to trust their own work, but want it to be open to repeal, amendment, and modification, and agitation, and petition, and memorial, and investigation every year for the next fifteen years, as it has been for the last fifteen. I am opposed to that, and I cannot conceive how any one can be in favor of it.

One of the great reasons that I have heard from Senators for keeping open this power to legislate is that there is such a startling peril from corporations in this country that the United States is in great danger of being literally overridden by corporations. I should like any lawyer of experience on this floor to tell me how many corporations exist to-day by charter from the Government of the United States. I do not count the national banks, which were organized under a general law and about which there is no question as to the right of repeal, but I refer to corporations that exercise any of this power that you dread. I should like my honorable friend from Vermont, [Mr. EDMUNDS,] who is a walking dictionary on all the statutes from Rome and Greece down to Vermont and Maine, to tell me how many there are of these gigantic corporations which threaten and imperil the safety of the Government of the United States. Can any Senator tell me enough of them to cover the fingers of two hands? Congress has been always sparing in its acts of incorporation. Even in this little District of Columbia, where the congressional legislation is as exclusive as the legislation of a State is within its own limits, we have not averaged one act of incorporation per annum since the foundation of the Federal Government, and I include fire companies, and banks, and Sisters of Charity, and benevolent societies, and Dorcas societies, and steamboats to run from Alexandria to Georgetown. Putting them all together they have not averaged one a year of the little private corporations for the District of Columbia. Does any gentleman on this floor know of any railroad company that was ever organized by the United States with the exception of the Union Pacific? I pause for answer and for correction if I am wrong. I do not assert it as a fact but can any gentleman tell me that Congress ever at any time in the past organized by charter a railroad company, with the solitary exception of the Union Pacific? Yet that is the corporation that is in danger of swallowing all the liberties of this people, and which must be open to the watchful eye of everybody who wants to get an amendment in for every year of its existence. Although you have got legislation under which they would repay every dollar to you, you must keep the question open and well stirred up, keep the company where they can be punched and reminded that the Government of the United States is in great peril from the corporation if we do not continue to assure our safety by perpetual agitation.

In connection with that I will say that this question is scarcely ever debated, there is scarcely ever a reference made to the gigantic corporation and to the danger to the United States from its operation, that there is not some open or covert censure of the Congress and of the men who composed the Congress that gave the charter to this company. Well, I was one of the offenders. I voted to subordinate the mortgage of the United States to the mortgage of the company. My honorable friend from Vermont furthest from me [Mr. MORRILL] voted with me, and so did every Senator on this floor who was at that time a member of the House of Representatives with the single exception of the Senator from New Hampshire, [Mr. ROLLINS,] who voted, I believe, against that provision and against the whole bill, and pos-

sibly my friend from Indiana, [Mr. VOORHEES,] of whose record I do not at this moment have a specific recollection. I was about to say that every Senator voted for that. I do not think in the Senate of the United States there was a solitary negative vote from New England on that provision. The immediate predecessor of my honorable friend, the chairman of the Judiciary Committee, certainly voted for it, [Mr. Foot.] My recollection is not precise as to the affirmative vote; but I do assert that not one New England Senator voted against it, and New England then had William Pitt Fessenden, and Charles Sumner, and Jacob Collamer; and the honorable Senator from Rhode Island, [Mr. ANTHONY,] who is here still, was then a member of the Senate. They voted for every provision of the bill, or at least did not vote in the negative. Nor was it a party measure. It was a measure of patriotism. Very prominent democrats voted for it. The gentleman who is at the present time Speaker of the House of Representatives, prominent in the councils of the democratic party, voted, I am very sure, with me to subordinate the Government bonds. It was regarded at that time as a measure for the safety of the Union; and all the exaggerated notions that have since been put forward that there was an immense lobby and a tremendous pressure brought to bear, and that members were besought and besieged and crowded into a vote of this kind, is purely a work of the imagination. There is nothing of it. The vote was given at that time without the slightest confidence that these roads would be built under the act, without the confidence that the legislation would produce their construction. If, as I have often said, and I will say it here, any person had come forward of responsibility enough to make his guarantee reliable and said to the United States (and I should like my honorable friend from Vermont [Mr. MORRILL] to contradict me if he disagrees with me; he was then in the House with me) "We will build this road from the Missouri River to the Pacific Ocean, the whole two thousand miles, without one dollar from you until we put a locomotive over it and it is accepted by the Government commissioners, and then we ask you to give us $50,000,000 in gold coin as a free gift," it would have been voted, in my judgment, unanimously, so eager was the desire for the road, so slight was the faith in the power to get it through at that time. It wound itself in with all the patriotic impulses of that day. It wound itself in with the warm desire to fasten the Pacific coast to the Union with hooks of iron, if not of steel. The vote was not given to benefit a company or even for great commercial purposes. It was a large, patriotic, Union-saving, outstretching arm of the Government of the United States to hold together in strong political union the great communities that bordered the two oceans.

That was the spirit of that day, and it has turned out well. It has turned out far better than we expected, and we are going to receive back every dollar that we ever put in it. As the matter stands today, I for one would not vote here to give to these companies a single privilege that I would not give were I a private owner of what the Government holds. I would govern my vote as representing the Government, as the circumstances now are, precisely by what I would regard my duty as a wise administration of a private trust.

We are going to receive all the money back; but if the Senator from Ohio will permit me, I will state that I think there has been a great deal of exaggeration made about the enormous aid that the roads received. It was great; it was very great; it was probably greater than will ever be given again to a road, because you would have to repeat the extraordinary circumstances that induced that

grant to have it repeated. But it is always stated as though the roads had received hundreds of millions. The two roads received $19,000,000 apiece in gold. They were building on a gold basis, and they received just what would have been equivalent to this sum if the Government of the United States had handed them out $19,000,000 in gold coin. Yet the Senator from Ohio states this question before the Judiciary Committee, as reported in the pamphlet which I hold in my hand and which I presume is authentic—it was circulated among all the members, placed on the desks, and I read from it—the Senator from Ohio states that the Government is out of pocket on account of these roads $500,000,000. Do I state the Senator's language correctly?

Mr. EDMUNDS. What paper is it the Senator reads from?

Mr. BLAINE. Here is a report put upon all the desks of members purporting to give a verbatim account of the hearings before the Judiciary Committee, and during the address of Judge Trumbull, formerly of this body, who appeared there as counsel for one of the companies, this occurs——

Mr. EDMUNDS. Just tell us what that book is.

Mr. BLAINE. I know nothing about it except from its title: "Arguments before the Committee on the Judiciary, United States Senate, on Senate bill No. 15." I presume the Senator received a copy. I saw them lying around on the desks of Senators. It has been commonly circulated.

Mr. EDMUNDS. Oh, it is one of the railroad publications, I imagine.

Mr. BLAINE. I read from it as follows:

> Senator THURMAN. Thirty years' interest on that would be 180 per cent., which would be $117,000,000 to be paid by these roads at the end of the thirty years, which would liquidate principal and interest. Now the Government pays the interest semi-annually, and therefore, so far as Government is concerned, it is like compounding interest, and that will make over $500,000,000 that the Government pays. The Government is out of pocket, I mean, $500,000,000.

Is that a correct account of what the Senator said?

Mr. THURMAN. I cannot say whether it is or not. But, if the Senator wants to know exactly how much I was speaking about, I can find the figures.

Mr. BLAINE. That is, the Senator substantially, I believe, admits it.

Mr. THURMAN. It would be big enough to swamp three or four such railroads.

Mr. BLAINE. Undoubtedly. Now, what I observe to the Senator is that this is hardly a fair way of reckoning. If the Senator should happen himself, in the generosity of his heart, to make a present to two young men and to hand one of them $10,000 which he happened to have in bank, and to the other $10,000 that was raised on a note, and at the end of eleven years he meets them and says, "I gave one $10,000, but I gave $20,000 to the other because I count it up with compound interest." That would be the spirit of the calculation indulged in by the Senator, and I beg to say that it utterly befogs and confuses the whole subject. The Capitol under whose Dome we sit to-day cost a thousand million dollars according to that mode of calculation at the very least; and if you will compound the interest of the small sum which Queen Isabella realized for her jewels the discovery of America was the most miserable speculation that ever any European went into in the world. If you take the feather that was on Columbus's hat, worth a gold florin, and compound it at what Western farmers pay on their mortgages, the whole real estate of North and South America to-day would not be sufficient to pay it.

So, when the Senator says the Government advanced $500,000,000 to these companies, he is dealing in mere figures of speech, and not in figures of arithmetic. What we paid them was this amount of bonds, and they are obligated in their mortgage to pay back that amount of bonds with all the interest at the maturity of the bonds. I believe the Senator from Ohio and the Senator from Vermont both admit that that is the law of the case to-day, and that is what we are providing for.

I have not seen the report of the speech of the honorable Senator from Delaware, [Mr. BAYARD,] but I think he stated that there was nothing in the debates to show that there was not a *casus omissus* in regard to the interest, that there was no such expression to be found. Did I understand the Senator to say that there was no expression by which the intent and meaning of the act could be inferred?

Mr. BAYARD. No; I made no such statement that I remember.

Mr. BLAINE. The Senator spoke of its being a *casus omissus*, I think. I have not seen his speech, as it has not appeared in the RECORD.

Mr. BAYARD. It was sent to the RECORD office on Saturday morning but I find it will not be published until to-morrow. The words "*casus omissus*" were found by me in an opinion cited in 1 Otto by the court in which Mr. Justice Buller, in speaking of the duty of the court to take a law as they found it, said that even a *casus omissus* or a tyrannical law would still be executed by the courts. What took place in the debate in reference to a provision for paying the interest by the companies *pari passu* to the payment by the Government, I did not refer to. I believe the Senator from Ohio [Mr. THURMAN] did refer to that.

Mr. BLAINE. I did not listen to the honorable Senator on that point; but certainly it was plainly apparent in the debates of Congress——

Mr. BAYARD. I will say this to the Senator: I did say that when by the judgment of the Supreme Court the American people discovered that this vast amount of interest, double the amount of the principal of the debt, could not be paid until the debt itself matured, it created universal astonishment except with those, and those few, who knew that the law had been so drafted. I did not consider it a *casus omissus*. I considered that the law which postponed a debt for thirty years and made none of the ordinary provisions that the interest should be payable semi-annually or annually in the progress of time between the contraction of the debt and its payment, was something extraordinary, and that had it occurred at the hand of a private agent he would have been suspected of infidelity to his client or of great incapacity.

Mr. BLAINE. Then if I understand the Senator he means that it was not the understanding of Congress that the law meant that the payment of the interest should be deferred?

Mr. BAYARD. I did not pretend to say what was the understanding of Congress, because I had not the debate before me. Those laws were passed when I was not in Congress, in 1862 and 1864, and I had not referred to the debate to know how it was that such language was arranged; but I spoke of the effect of the language, which would be to postpone the payment of a hundred million of dollars until $55,000,000 became due, and to say that $100,000,000 of interest should not be paid until $55,000,000 became due was very startling.

Mr. BLAINE. Now, the Senator will hear that during the pendency of the bill a very careful gentleman from Indiana, Mr. White,

well known to Senators on this floor, since deceased, moved an amendment pending the bill; and if the attention of the Senator has not been called to it before I will be glad to have him give attention to it now. Mr. White says:

It will be observed, by reference to the section, that there is no provision in reference to the payment of the current interest. I therefore move to amend by adding to the section the following:

"It is declared to be the true intent and meaning of this section that the current interest on said bonds shall be chargeable to said company, to be by them reimbursed to the United States within one month after each semi-annual payment thereof by the United States; and a default therein shall subject the said company to the same liability and forfeiture above provided for in the case of the non-redemption of the bonds at their maturity."

That amendment was rejected. That amendment was offered by Mr. White and explained by him, and he was answered by Mr. Campbell, of Pennsylvania, then of the House of Representatives, who reported the bill, and it was rejected.

Mr. BAYARD. I have not examined the debate. I ask the Senator was it there proposed that the interest should be postponed until the principal became due?

Mr. BLAINE. No, it was rejected on the assumption that the 5 per cent. and the half transportation would pay it. It was rejected on the ground that they had put enough into the bill to secure the Government.

Mr. BAYARD. To secure the payment of the interest?

Mr. BLAINE. Yes. Now the significance is this: that amendment was offered when the act of 1862 was pending, which was a much more stringent law than the measure of 1864, because under the act of 1862 the companies gave up and could not build the road. It makes it all the more significant, as the Senator will observe, that the amendment was rejected on that bill.

Mr. BAYARD. I fully admit the intendment of the Senator's suggestion, but it seems to me that at the time this amendment of Mr. White was offered, perhaps from excessive caution, if you please, from greater caution, it was considered that the repayment of the interest by the company *pari passu* to the Government was sufficiently protected by the language already in the measure, and they voted it down. I will say further that when the case came before the Supreme Court, in 1 Otto, and was there argued, it was very strenuously and forcibly held that it never could have been the intent to postpone the payment of the interest until the principal became due, not simply because it was out of the ordinary line of transaction, but because by the very act the Government lien and the Government bonds were to give way to a prior lien of the company similar in tenor and amount. The similarity in tenor and amount was shown by their issuing bonds for the same amount, or within a very small proportion less, of a tenor that prescribed for the semi-annual payment of the interest as the time passed on. Therefore it was a matter, as I say it is now, of very great surprise to me, as merely one of the great body of the American people, that the provision for the repayment of interest paid out of the public Treasury for the use of a company should not have been protected by a provision to repay to it at the time the interest was due from the company.

Mr. BLAINE. The Senator from Illinois, [Mr. DAVIS,] who was then on the supreme bench and delivered the opinion, took, I think, the very sensible view, both as a lawyer and a business man, that it never could have been conceived by Congress that the road at the very instant of its completion could pay the interest on the Govern-

ment bonds. It was not a practicable thing as a business arrangement, and the Senator from Delaware will observe that there would have been no boon in the grant, there would practically have been no advantage in the grant had that been the construction. There would have been no beneficence on the part of the Government if they had been held instantly to pay that interest, because the Government would have been just as hard a creditor as the first-mortgage bondholder was. There would have been no beneficence on the part of the Government whatever in that case, and the Supreme Court so decided.

Mr. BAYARD. They did so decide, undoubtedly. I am not finding fault with their decision as a matter of reasoning upon the law they found before them, but I submit to the honorable Senator from Maine that nowhere in this opinion that I have been able to see is there anything suggesting the idea that the court were not deciding upon the *litera scripta* of the statute as they found it, but there is in this opinion a suggestion that if the law had provided otherwise that expression would have been found on the face of the law, and the court would certainly have executed it; but as to the reasonableness, or the unreasonableness of a provision for the payment of the interest as the interest fell due, there is nothing in this opinion that I have been able to discover whatever. Here is the opinion; I have looked it over and read it carefully.

Mr. BLAINE. I have not read it lately, but it seems to me the honorable Senator from Illinois, (then on the Supreme Bench,) whom I regret is not in his seat, proceeded at length to show the great character of the enterprise, and what the Government was intending to do in regard to it and what the motive of the Government was.

Mr. BAYARD. He did, no doubt.

Mr. BLAINE. I think the Senator from Illinois delivered what would be a most extraordinarily good speech in the Senate on that point, and which was much clearer to my mind than the one which he delivered afterward in the Senate on the subject.

Mr. BAYARD. I said merely what they claimed to decide was the language used by the Legislature, but as to the reasonableness or unreasonableness of it, as to the improvidence or providence of it, the court said nothing.

Mr. BLAINE. I have not the decision here and of course cannot refer to it.

Mr. BAYARD. I have it here, and I think that the Senator will not find anything in it in the shape of an opinion that any legislation to have provided for the payment of interest would have been wise or otherwise.

Mr. BLAINE. I do not see that that is material at all.

Mr. MATTHEWS. If the Senator from Maine will allow me a moment, I think he is entirely correct in this fact at least, that the Supreme Court went into the question of the history and utility of the enterprise to fortify the reasonableness of their construction of the law.

Mr. BAYARD. As they found it. They said they had nothing to do with the wisdom of it or otherwise; that they simply decided it according to their duty, (I forget the precise phrase;) that they interpreted the language of the Legislature as they found it and after that they had no duty to perform.

Mr. BLAINE. I have not 1 Otto here, but if I had I should like to read the opinion of the court, because I think if my memory is not at fault it travels very far outside of the literal and exact point that the Senator from Delaware would rein it down to.

Mr. BAYARD. I think the Senator will find stronger words than I have used there.

Mr. BLAINE. That may be. I now have the opinion. Now I will read briefly from it:

> Many of the provisions in the original act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which existed when it passed. The war of the rebellion was in progress; and owing to the complications with England, the country had become alarmed for the safety of our Pacific possessions—

I am reading from the opinion of the Supreme Court—

> The loss of them was feared in case those complications should result in an open rupture; but, even if this fear were groundless, it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every government owes to its citizens—

That is setting forth more tersely and eloquently than I did the exact position under which I gave my vote for that act—

> It is true the threatened danger was happily averted; but wisdom pointed out the necessity of making suitable provisions for the future. This could be done in no better way than by the construction of a railroad across the continent. Such a road would bind together the widely separated parts of our common country, and furnish a cheap and expeditious mode for the transportation of troops and supplies—

I am surprised to see how accurately and even literally I interpreted Judge DAVIS—

> If it did nothing more than afford the required protection to the Pacific States, it was felt that the Government, in the performance of an imperative duty, could not justly withhold the aid necessary to build it; and so strong and pervading was this opinion that it is by no means certain that the people would not have justified Congress if it had departed from the then settled policy of the country regarding works of internal improvement, and charged the Government itself with the direct execution of the enterprise.

Mr. BAYARD. At page 81 the Senator will find the language to which I referred.

Mr. BLAINE. Oh! that may be. I did not at all deny that what the Senator quoted was correct, but I stated that the whole opinion was based on precisely the argument I submitted that justified Congress in the passage of the act, the whole of it.

Mr. BAYARD. And when the court came to construe this statute they used language such as I stated.

Mr. BLAINE. The court construed the language taking in all the circumstances which surrounded the act as wise courts always will, of course. We are not to-day disputing practically about the payment of the interest. The Senate is pretty well agreed that these companies can repay it. I think the companies are quite willing to pay it. At all events Congress is quite resolved that they shall pay it. But I return simply to the point I set out upon. After you have laid down your own terms, after you have written upon a white sheet of paper the precise exactions that you demand of these companies, while you stand in the full possession of a power which you will not permit even to be questioned, why do you not accompany it with at least the assurance that the exercise of that power shall be with a fair and honorable understanding that if the companies faithfully comply with your conditions, they shall be allowed to go forward to do their own work, to build up their own great enterprise, and pay off their entire obligations to the Government without fear of interference, without being threatened or menaced or disturbed or hurried or worried. It seems to me that that is the wise course for Congress to take, and it is wholly in that spirit that I have offered the amendment which is now pending.

Mr. SARGENT. I understood the Senator from Delaware to state that at this decision of the Supreme Court everybody was surprised.

Mr. BAYARD. I did not say everybody. I said that I believed it took the great body of the American people by surprise.

Mr. SARGENT. I am surprised at that statement when the fact is apparent by the records of the Senate that the Judiciary Committee of the Senate as early as 1871 took exactly the same position that the Supreme Court did in this decision.

Mr. BAYARD. I know the Judiciary Committee of the Senate or a portion of it came in here with a report, which astounded me at the time, to the effect that this interest-money, paid out semi-annually from the Treasury, could not be recovered from the railroad companies for thirty years. Although that opinion was given, yet it was not for some time afterward that an amendment to an appropriation bill, which I think was prepared by the Senator from Vermont, provided that these companies should come into the Court of Claims and prove their right to receive one-half of the transportation-money which had been withheld.

Mr. THURMAN. Two years afterward.

Mr. BAYARD. I voted for that because I could not believe that when they came before the court such a decision would be reached. My ignorance was probably owing to my want of familiarity with the terms of these statutes, passed long before I came into Congress. When the Supreme Court, affirming the decision of the Court of Claims, came to the conclusion they did I was one of the very many people of this country who were amazed and sorrowed to find that while $3,000,000 annually and upward were passing away from the Treasury of the United States for the benefit of the stockholders of these corporations, there was to be no means of repayment upon that vast sum until thirty years had elapsed. Yet I believe the Supreme Court, following the statute as they found it, construing it strictly as they did, were unable, as the power to "alter, amend, and repeal" had not been exercised by Congress, to come to any other conclusion. That is what I meant, by saying that I was surprised at the result.

Mr. SARGENT. The Senator from Ohio, [Mr. THURMAN,] who reports this bill, concurred with that report of the Judiciary Committee in 1871. So far as I can find out, only one member dissented from it, and that was the Senator from Vermont, [Mr. EDMUNDS.] But in his altercation or discussion the other day with the Senator from Massachusetts [Mr. DAWES] the Senator from Vermont seemed to object to the construction which the Senator from Massachusetts put upon that opinion of the Judiciary Committee of 1871. Any one who looks at the running debate that took place at that time will find himself somewhat puzzled to know whether the Senator from Vermont believed in the report of the committee or did not believe in it. But where the law committee of this body report that the view which the Supreme Court subsequently took was the correct one I do not see the ground of surprise of Senators that the Supreme Court should subsequently take a position which agreed with that of the law committee of the body. The legislation which subsequently took place was entirely in accordance with the opinion of that committee, because it did not legislate, as has been asserted here over and over again, that this money should be paid, but simply submitted the question to the Supreme Court whether or not it should be paid until the maturity of the debt.

One single remark further. It has been said over and over again, and the Senator from Delaware now repeats it, that the United States

is out $3,000,000 annually and that there is no way to get this money back before the maturity of the bonds, &c., and he looks upon that as a great hardship. Without the railroad the Government would be out $8,000,000 annually, with no power ever to get it back, because the amount of transportation has been done so much more cheaply to the Government on account of the security against Indian wars, on account of the cheap and rapid transmission of the mails, to say nothing of the new States and Territories. The Senator from Delaware talks about enhancing the resources of the Government. The great amount which was saved by the Government would have been elsewise paid in transportation of various kinds, necessary to be carried on upon an immense scale, and not a dollar of it ever would have come back to the Government except in the incidental advantage derived from the transportation. Therefore I say, when the finger is continually pointed to the fact that the Government, under the terms of this contract, is paying some $3,000,000 or more interest annually, which is not to be repaid until the maturity of the bonds, its consideration for doing that was that the companies would render to it the great benefits which have been realized from the road, and which are named in the decision of the Supreme Court as the exciting motive of Congress in granting the aid.

Mr. BAYARD. With due respect to the honorable Senator from California, who has followed out to-day very much the same train and track of his remarks of Friday last, he seems to consider that these companies have created, and generously given to the people of the United States, the enormous advantages of transportation for their mails and their war supplies, to which he has referred. Whose property was this road built by? Whose land did it pass through? Whose bonds paid for it? The people of America were the owners of all that property, and if they have gained advantage it has been by the use of their own estate. These roads were not chartered for the benefit of individuals; they were chartered for the development of national resources and for national ends. Therefore just as well might we thank the man who would pay over to another a small portion of his honest debt, and say how generous it was without pausing to say whose money and whose estate was the object of all this liberality. Of course the Government has availed itself of these roads. Of course the great agency of steam, and the intercommunication, has enabled it to transport mails, and troops, and supplies for those troops, at great advantage; but is that due to these corporations whom it has employed to develop its own resources? You might as well credit them with the invention of steam itself, as to give them credit for this money so saved. Whatever they have done and done faithfully, I am disposed sincerely to admit and acknowledge and thank them for; but it does seem to me that the great underlying idea, in aid of which the companies were incorporated and these national grants made, is constantly overlooked. It was the use of the people's money for the sake of the people. So far as the agent, the trustee, shall faithfully execute his trust, let him be thanked by the people, rewarded by their gratitude and their confidence given him, or if already given, continued; but let it not be forgotten, that we are dealing from first to last with the property of the people of the United States, put in trust for their use. If this investment shall redound to the benefit of the United States as a Government, as well as to its citizens as individuals, then it has been amply successful. If those persons employed in the agency shall receive large profits from it, I shall be exceedingly pleased. I am not disposed to begrudge them any advantage, any honor, any thanks

that may be due them; but from the first to the last, I shall endeavor to keep in my mind in voting in regard to this bill and the great subject to which it relates, the fact that it is a public measure, the great object of which is public welfare, and that everything else is subordinate and purely incidental.

Mr. THURMAN. Mr. President, I do not rise to make anything like a set speech, and I should not rise at all but for some remarks that were made by the Senator from Maine, [Mr. BLAINE.] I shall dispose of them, and then I shall take my seat.

I found myself duly notified in the morning papers that my scalp was to be taken to-day and hung at the belt of the Senator from Maine; but feeling my head now it feels very sound indeed, I think, both inside and out; and I think, Mr. President, that it will be a good while before the Senator from Maine can get what little hair there is on my head by mousing around among the Congressional Globes and CONGRESSIONAL RECORDS to try and find something inconsistent between what I may have once said and what I say to-day. I submit to that Senator that such an occupation is totally beneath his great powers. I am a very Lilliputian man to him now; but yet with what little brains God has granted to me, I should feel infinitely humiliated if I went searching around among the CONGRESSIONAL RECORDS and Congressional Globes to try and convict a Senator of some inconsistency of speech or thought in the haste of language in debate as a means of defeating a great measure that ought to stand or fall on its own merits and not on the personal consistency of an individual. I do think there is something else that was a little remarkable in the observations of the Senator from Maine. Last Thursday, at the close of the day, when more than half the Senators had started home, and when I was about to start too, and the farthest thing in the world from my thoughts was that I should enter into any discussion, the Senator from Maine and two or three others got around me and stood up and put questions to me as if I were subject to a cross-examination by the whole Senate upon what was the law of the land, and what were ethics, and what was history, and what was everything else, until at last I had to tell the Senator that we were not in the Middle Ages when a man went to a city and published a defiance to everybody to come and debate with him and put questions to him, he affirming that he would answer them all. I was compelled to tell the Senator that I was no Admirable Crichton to be catechised in that way. In the heat of that discussion I confess that for a moment I lost my temper, so much so that I was perhaps guilty of a little rudeness to my most estimable friend who sits on my right [Mr. EATON] and which I have regretted ever since. Because at that very moment I did not recollect that I had taken any part in the debate of 1873, the Senator now comes forward to convict me of what? Of a failure of memory under such circumstances as that, and, to make the failure the more significant, he says that I spoke thirty-one times on that act of 1873. How does he count up his thirty-one times? I will give the Senate a specimen of how he makes out thirty-one speeches.

Mr. BLAINE. "Appeared" was the word I used.

Mr. THURMAN. Oh, well, "appeared." I appeared all the time; I was here all the while.

Mr. BLAINE. Not in the Globe.

Mr. THURMAN. I appeared here in my own person. But here is the kind of speeches that the Senator from Ohio made which served to make up the thirty-one times:

Mr. THURMAN. The Senator is entirely mistaken. The amendment was moved

by the Senator from Nevada in the Senate. I am speaking of the amendment of 1871.

That was an observation to correct my friend, Mr. Stevenson, and that is one of "Mr. THURMAN'S" speeches. Again further on, after Mr. Stevenson had spoken again, "Mr. THURMAN" said:

Not at all. It was moved by the Senator from Nevada on my right, [Mr. STEWART.] It was very largely debated.

That is speech No. 2. Then going along further, Mr. Stevenson still speaking, "Mr. THURMAN" said:

If my friend will allow me to get through he will find that he is jumping before he gets to the stile. If the House did not agree to this amendment, how in the name of sense did it become a law?

That is speech No. 3. Then further along, Mr. Stevenson still speaking, "Mr. THURMAN" said:

No, I do not.

That is speech No. 4. Then further "Mr. THURMAN" said:

I have not given up the floor yet.

That is speech No. 5; and so on. There are several other of these speeches which perhaps I ought to read. Here is one where I said:

Where is that?

And another:

On what page of the Globe?

This is the way in which the Senator from Maine attempts to defeat the Judiciary Committee's bill by using more arithmetic in a count of the number of times my name appeared in the Globe than he does in answering the Judiciary Committee's bill.

So much, Mr. President, for that. I have regretted to see in this debate from the beginning that scarcely any one has opposed the bill of the Judiciary Committee without in some way or other seeming to cast reflections upon that committee. I alluded to it once, and it was intimated that certainly I did not claim that Senators were not to exercise their own judgment. Certainly I never did claim any such thing. I said then that I claim no infallibility for the Judiciary Committee. Every Senator has a perfect right to disagree with it, and it is his duty to express his opinions if he does disagree with it. Neither that committee nor any member of the committee has assumed any superiority in this body, if I know it. I certainly have not observed it; but yet there was in the tone in which the committee was spoken of and in which the measure was spoken of, and of late, I am sorry to say, in which its *personnel* is spoken of, something that is a little unusual in this body. This morning, not content with an attack upon the committee generally, the Senator from Maine has seen fit to come in and single out the Senator from Ohio and to some extent the Senator from Vermont, and he has said in his peculiarly forcible and dramatic style that the Senator from Ohio has occupied four positions on this subject within the last seven years, and then by way of witticism he intimates that if this bill passes the Senator from Ohio may occupy seven different positions in the next four years.

Mr. BLAINE. Oh, no, I said that some other Senator may.

Mr. THURMAN. "Some other Senator." Well, he might just as well have said "the Senator from Ohio," for if the Senator from Ohio has shown such a facility for changing, and can change four times in seven years, the probability is that he would be the man who would change seven times in the next four years.

Mr. BLAINE. But I did not say that.

Mr. THURMAN. Mr. President, I defy any man in the world who

reasons fairly to point out the slightest inconsistency between my course to-day and that on any previous occasion. There is none whatever. It is all in the imagination of the Senator from Maine. About what were we talking when I spoke the words that he read to the Senate to-day? We were talking about the right of the Government to withhold the half-transportation account then due to these companies. We were not in the slightest degree talking about any amendment to the charter. Not a word about that were we talking of. Mr. Akerman had given his opinion as Attorney-General that the Government had a right to set off the interest which it paid against the half-transportation account, which by the act of 1864 was to be paid to the companies. The companies denied that that was the law. They petitioned Congress on the subject. The matter was referred to the Judiciary Committee of the Senate. That committee, by a vote of 6 to 1, decided that Mr. Akerman was wrong, that there was no such right of set-off on the part of the Government, and accordingly they reported a resolution directing the Secretary of the Treasury, who had withheld the half-transportation account to pay it to the companies to whom it belonged under the then existing law. The Senator says that I agreed to that report. So I did; and I stand by it to-day, and say that it was good law. It has been affirmed by the Judiciary Committee of the House, by both Houses of Congress, by the unanimous decision of the Court of Claims and the unanimous decision of the Supreme Court of the United States. I think that is sufficient to establish that it was good law. I stand by that.

But then he said I was inconsistent with that because afterward I was in favor of submitting the question to a judicial determination. I was in favor of submitting it to a judicial determination from the first. When the resolution was under consideration, reported by the Judiciary Committee in 1871, I drew up an amendment to submit the question to the Court of Claims, so that it might not rest upon any legislative interpretation of the law but upon a judicial determination.

In 1873 I did nothing more than what I attempted to do in 1871, to have a judicial determination not of the question whether Congress could alter, amend, or repeal—I should have as soon thought of denying the Decalogue as to deny that—but a judicial determination of what were the rights of the companies as the law then stood to the money which was in the Treasury of the United States, and which was claimed by the companies, but refused to be paid over by the Secretary of the Treasury; that was all. That resolution passed. It gave great dissatisfaction; it gave such dissatisfaction that in 1873 some Senator, and I think it was the Senator from Vermont or my late colleague, Mr. Sherman, for they were both very much opposed to that opinion of the Judiciary Committee, proposed that that thing should be litigated, and consequently introduced a bill to repeal that direction of the act of 1871, the money still not having been paid over, and to make a case for the courts to decide. Of course I was in favor of that. Of course as I was in favor of it in 1871 so I was in favor of it then. So that instead of there being any inconsistency whatever I was perfectly consistent throughout the whole consideration, both in 1871 and in 1873.

Then, where is there any inconsistency now? There is not one word in the bill of the Judiciary Committee that is inconsistent with the resolution of 1871 or with the decision of the Supreme Court of the United States. Those who are opposed to this bill have been challenged again and again to show one line, one letter in the decis-

ion of the Supreme Court in the interest case in 1 Otto that conflicts in the slightest degree with the bill which is now before the Senate, and nobody has ever shown any such thing.

I am not accustomed to waste the time of the Senate with talks about myself, and much less about my own consistency. The only complaint that ever has been made against me, so far as I know, connected with political life, is that I have been too consistent, that I have been too hard-headed, well-baked an old democrat and not given to change. That is the only thing complained of, that I am too obstinate an old fellow in that respect and not given to change according as the current may flow or the wind may blow.

But if I were disposed to be a little personal, which I am not, if I were disposed to drag personalities into this discussion, I should like the Senator from Maine to explain this little record which I hold in my hand. Two years ago, on the 7th day of July, 1876, the House of Representatives passed a sinking-fund bill known as the Lawrence bill and sent it to the Senate. It was a bill upon which that committee had worked very long, very long indeed, and made a most elaborate report as early as April 25, 1876. That bill finally came to a vote three months afterward. That committee had reported a bill far more severe than the bill now before the Senate, far more severe than the bill subseqnently reported by the Judiciary Committee of the Senate—Senate bill No. 15, which I introduced last October, and had again referred to that committee. They reported that bill far more severe, I say, though it asserted as fully as it could possibly assert the right of Congress to alter, amend, or repeal this charter, and imposing on these companies conditions far more onerous than any bill that ever has been reported to the Senate. That bill passed the House of Representatives on the 7th day of July, 1876, by a vote of yeas 159, nays 9. But, Mr. President, where was the eloquence of the Senator from Maine then? Why was it not exercised, he who exercised such great power in that body over which he had presided so long? Why did he not thunder then? If that bill, which asserted so strongly the right of alteration, amendment, or repeal, and preserved it, was wrong, why did he not then tell the House, "You will make this a foot-ball of stock-gamblers of all sorts and descriptions for all time to come if you pass this bill?" Why did he not warn them of these dangers which he has so eloquently depicted to-day? No, Mr. President, he was mute as the lamb before the shearer. Not one word do I find that he ever uttered against that bill, and when it came to the voting he was like Job's friends. He said that his friends were like the waters of the brook: "What time they wax warm they vanish; when it is hot they are consumed out of their place." He did not vote at all, and I should not be—no, I will not say that—but it may possibly happen that when the vote comes on this bill the Senator from Maine may have business elsewhere, or, which God forbid, may not be in a good state of health!

Mr. President, if we were to go into personalities, which I eschew, I do not want to go into, I might refer to my friend from California. I am sorry he is not here. He has been a little warm on the subject of this Judiciary Committee bill, and he seems to think that we are a very exacting set of fellows, and that we are going a good deal too far. Why, Mr. President, how did the Judiciary Committee of this body ever get jurisdiction of this subject? Who first gave it jurisdiction? Who gave it jurisdiction before that Lawrence bill came from the House? Months before that bill came from the House, who

gave it jurisdiction? I will read and show you. On the 6th day of January, 1876—

On motion of Mr. SARGENT, it was
*Resolved by the Senate*—

Now, I beg the attention of Senators to what was the resolution—

That the Committee on the Judiciary—

Not the Railroad Committee. He did not want them to have anything to do with it—

That the Committee on the Judiciary are instructed to inquire what legislation, if any, is necessary to secure indemnity to the United States for advances of interest paid and to be paid by the Government on account of subsidy bonds issued to the several Pacific Railroad Companies, and to secure indemnity against liability to pay the principal of such bonds—

By what? Now, mark you, by what—

by requiring the creation of sinking funds, or otherwise. Also, whether the issues of the companies' mortgage bonds under the act of 1864 were in excess of the amount necessary for the completion of said roads; and, if so, whether such issues are a first lien upon the roads. Also, whether any of the bonds of theUnited States issued in aid of said roads are a first lien on the same. And that the committee report by bill or otherwise.

He set us to work to find out what was necessary to indemnify the Government of the United States for the interest paid and to be paid, and also to secure it against loss. And not only that, but he started an investigation or attempted to start it, to see whether or not these first-mortgage bonds, instead of being used as necessary for the construction of the road, had not been actually put into the pockets of the shareholders, and therefore were not in equity or morals, or perhaps in law, a first lien on the road at all, and whether we ought not to assert that the Government debt was the first lien. But now, now forsooth, when we talk about getting indemnity; now when we talk about a repayment of the principal and interest of the subsidy bonds, we are told that Mr. White or some other pale-colored individual in the House of Representatives in 1862 or 1864 thought in his wisdom that the Government might as well make these roads and lend this money and never ask repayment. What if Mr. White or Mr. Black or Mr. Brown or Mr. Yellow or Mr. Red did think so? The answer to that and to all talk about how much the Government has saved by the construction of this railroad in its transportation account is that Congress took that into consideration. But that was not all. Congress took these patriotic motives into consideration, to which the Senator from Maine has alluded. But that was not enough. Congress was not willing to be paid in patriotism. It is not legal tender or current coin in the transaction of business. Congress was not willing to be paid in savings on its transportation account. It gave enough for patriotism, and in that respect did wisely; it gave enough bonus in land and in the advantages of this loan with no rests in the calculation of interest for all the benefit that the roads could be to the Government in saving transportation, and having given enough it said to these companies, "You are to repay this money which we loan to you, both principal and interest." So it is said in the law, and there is the end of the whole matter.

Now, Mr. President, the Senator from Maine says that we have written down here in this Judiciary Committee bill on a white sheet of paper what we demand; why not make it a fixed finality at least until the maturity of the bonds? I tell him the bill is framed upon no such idea. If it were the terms of this bill would be very different from what they are. What would he have? Does he know what

is to be the operation of this bill if it should pass, say, for instance, upon the Union Pacific? Taking its business for the last six years and supposing its business in the future to be the same, how much will it have to pay into the sinking fund? Only a little over a half million dollars. The half-transportation account on the past average will amount to $421,000, and it will have but $100,000 in cash to pay. Now the Senator, upon such a payment as that into the sinking fund, the payment of half a million dollars a year, proposes that Congress should tie up its hands for twenty years and make a bargain with this company that shall be irrepealable. If such an amendment as that of the Senator from Maine should be inserted in this bill, it would be the best bargain this company ever made. The idea will not do at all.

But, Mr. President, away down below that lies the principle of the thing. I affirm, as I have affirmed before, that this Government had better lose every dollar due and all that is to become due to it by these companies than to give up that right which it has to alter, amend, or repeal the charter. The amendment of the Senator from Maine is the worst attack upon this bill that could be made. He knows very well that with that provision fastened on to this bill the bill would not only not be worth the paper on which it is written, but it would be far worse than nothing; he knows that that would be a fatal death-blow given to this bill.

Mr. President, let no one deceive himself about this; let no one imagine he can be a friend of the Judiciary Committee bill and at the same time a friend to the amendment of the Senator from Maine. The amendment of the Senator from Maine is prussic acid to this bill. It cannot survive a day, not an hour perhaps, after that amendment is adopted. It is a stab at the very heart of the bill; it is as fatal as any stab could possibly be. I hope, therefore, the friends of this bill, those who mean to make these companies live up to their obligation, do what they assumed to do; those who mean that these companies shall know that the Government is their master and they are not the masters of the Government, will see that no such poison is taken into this bill as the amendment of the Senator from Maine.

Mr. BLAINE. Mr. President, when I rose this morning I intended only to correct by the Senator's own record what he so positively, of course through lack of memory, denied on Thursday last. I had hoped to do it on Friday, and seeing the Senator on Friday afternoon about to leave the Chamber as I thought, I said to him that I was intending to make a remark personal to himself. He had been busily engaged polling the Senate on the Judiciary bill with a list of the yeas and nays in his hand. I notified him that I was going to make the allusion and he took notice and said that he would be in his seat. The Senator nods remembrance of that. The next thing I heard of it, it appeared in the democratic paper this morning that I was going to take his scalp, which I supposed was a modest way of the Senator advertising through his own party organ that he was going to take mine.

Mr. THURMAN. The Senator forgets——

Mr. BLAINE. Certainly he does not suppose I was on such terms with the Washington Post as to secure that favorable notice. It must have grown out of the intimacy he has with that paper.

Mr. THURMAN. That is very clever; but the Senator must remember that on this question the Post is on his side and against me.

Mr. BLAINE. That may be; but the Senator will see that the Post is not on my side politically. As I happen to read that lively sheet every morning, I discover a great many adulatory comments on the

Senator from Ohio; but the keenest eye has thus far failed to disclose any of that kind of references to myself; so that I think the judgment of the Senate will be that that notice did not get into the Post through me.

The Senator talks about this mousing around in the records! What do we have records for? What do we preserve the Globe for? The Senator went elaborately over all the little speeches he delivered in that debate. He says one speech was merely calling the attention of Mr. Stevenson to this, and another speech was calling the attention of the Senator from Vermont to that. Why, the speeches of the Senator from Ohio, recalled with some humor, show that, in addition to his long speeches which he did not quote, he was wide-awake during the whole debate, and that he was interpolating a remark here and there in everybody's speech. But not only did he fail to remember his long speeches which he did not refer to during the whole of his remarks just delivered, but he was putting a finger in everybody's pie, correcting Mr. Stevenson on one point, suggesting another point to my friend from Vermont, prompting the Senator from Delaware in another place, and generally, if I might use a coarse phrase, bossing the debate; and five years afterward, when I ventured modestly to remind the Senator of his declarations, he says: "I never said a word at all in that debate." Then when he attempts to put me down in the Senate by his absolute denial, and I bring the Globe in, he says he would not go mousing around; and, finally, he puts in my personal record by showing what I did or failed to do on Mr. William Lawrence's bill in the House of Representatives on the 7th of July, 1876. I think the Senator did leave a little wicket of escape open for himself on that personal charge, but he did it in so indirect and blind a manner that the Senate would not exactly comprehend it, but did it, I think, enough to suggest to me, unimportant as is my personal history, that I had not then for a month been in the House of Representatives; that I was on a bed of sickness from which some friends at last thought I might never rise, and that, so far from having anything to answer for about the bill of Mr. William Lawrence, I did not know that it or any other bill was pending in the House of Representatives. So much for that.

And now the Senator says he would rather lose this bill than have my amendment; that it is prussic acid to it. I went to the honorable Senator in the confidence of the friendly relations which across the political line have existed between us, and had a full and frank talk with him about this bill. I asked him "How near will this bill come to paying this mortgage by the maturity of the bonds?" He said it would leave some $20,000,000 to each road.

Mr. THURMAN. No; about $35,000,000 for the two. I said nearly $40,000,000 for the two.

Mr. BLAINE. Then I am correct; about $20,000,000 for each road. I took the Union Pacific because it is regarded as the less strong of the two roads. The Central Pacific is the wealthier, and I was illustrating on that. I said then, taking the Senator's own figures, this only leaves at the maturity of the mortgage, counting in the first mortgage above the Government, $47,000,000 on a road that is absolutely now paying 7 per cent. on $90,000,000, and I said that security must be ample; and then the honorable Senator will remember that, endeavoring to be as frank as I could, I suggested this amendment to him in my own house. I said "Your bill has many good features. The amount of it I think is not exorbitant. You state that what will remain is so small as to be beyond peradventure secure. Now

make your bill a finality and you will get a large vote for it." I suggested that to the Senator.

Mr. THURMAN. Yes; but the Senator will do me the justice to say that I did not agree at all to his amendment.

Mr. BLAINE. Of course it is dangerous ground and I will not venture any further on private conversations. I think the Senator was not half so obdurate then as he is in the Senate now.

Mr. EDMUNDS. Was it after dinner?

Mr. BLAINE. No, sir; it was before dinner.

Mr. THURMAN. I can only say to the Senator that his recollection is at fault, for I told him I never could agree to such an amendment.

Mr. BLAINE. Does the Senator desire me to state what my recollection of that conversation is?

Mr. THURMAN. The Senator can state what he pleases about it if he thinks proper to do so; but I do affirm that I told the Senator then I could never agree to that amendment and never would.

Mr. BLAINE. I never desire to refer to a private conversation, although my recollection of it does not wholly agree with that of the Senator. The Senator, as I say, stated to me—let us take the points that are public which affect that—there would be only $20,000,000 left. Then I said to him, "You ought to make it a finality, because you have got ample security." Now he says it is prussic acid and he would rather lose the bill than agree to it. I admit it is prussic acid to all agitation of the subject; it is prussic acid not only to Wall-street agitation but to political agitation; it ends the whole matter. The stalking horse of "great corporations" dies instantly. There is nothing left of it if this amendment is put in, and the Senator himself knows that I offered the amendment in perfect and entire good faith, else why should I have consulted him the very first man about it?

Mr. THURMAN. I have not impeached the good faith of the Senator.

Mr. BLAINE. I offered it in entire good faith, and rather than have any suspicion this moment that something remarkable was withheld of the private conversation which has been referred to, I desire to say in all frankness that I understood the Senator to object to my amendment, but not to object to it as strenuously as he does now, and that he said it would in any event be impossible ever to get the chairman of the Judiciary Committee [Mr. EDMUNDS] to agree to it, and that that made the thing impossible. That is what I understood that conversation to be, and that was all of it.

Mr. THURMAN. That is like your inference of my inconsistency.

Mr. BLAINE. That is the way I understood the conversation to be. It is better to have it out than to have it merely intimated with exaggerated inferences. It was a very innocent and honorable conversation, and the Senator will remember it was entirely friendly, and certainly I mean no remark I made this morning to be otherwise. Every solitary word that has been said in this debate since, every exposition of this bill that has been made since, everything that has been suggested *pro* and *con* has enforced upon my mind with still more urgency and still more strength the propriety of taking a bill that does pay off everything but $20,000,000, leaving the amplest security for that $20,000,000, and calling it a finality. Absolute in any event? Not at all; but absolute if the companies faithfully comply. Who is to be the judge of that? Congress; and it is a finality only as respects the debt. In every other respect Congress possesses the right to alter and amend and repeal just as if my amend-

ment had never been suggested. This amendment does not touch it at all. It merely says that this settlement will, in a money point of view, secure the Government. We have looked it all over; and if your companies shall pay these sums the Government will be entirely secure in its mortgage debt. If you will do that and will faithfully comply with these provisions, you may go on until the maturity of the bonds, we reserving the right to legislate in any other direction that our sense of duty may call upon us to do, and reserving of course the right to see that the faithful compliance which we exact of you in these provisions shall not be a meaningless term, but shall be one that we will hold you to by all the powers of the Government. Is that an unreasonable proposition? Is not that the way to encourage the companies to be faithful in their compliance? Is not that the way to make the payment effective and to bring money in the Treasury of the United States? Is it not also the way to make those roads efficient—to make them carry out the great end for which they were incorporated, to carry out the great commercial development of the vast country which they traverse, and in short to secure all the ends aimed at when the Government gave its munificent bounty and imposed upon the railway companies their great responsibilities?

Mr. KERNAN. Mr. President, I shall not ask the indulgence of the Senate for any considerable length of time. The important question presented to us is, has Congress, under the power to alter, amend, and repeal, reserved in these acts the right to legislate as is proposed by the bill of the Judiciary Committee, and, if it has, is it wise and proper that Congress should now bargain that power away to the extent mentioned in the amendment of the Senator from Maine, [Mr. BLAINE.]

Sir, I have no doubt that Congress has the power under this reservation, and I do not think it would be wise or proper for Congress to contract it away for twenty years or any other length of time as proposed.

Has not Congress power to legislate as is proposed by virtue of this reservation to alter, amend, and repeal? I do not understand this corporation created by these acts to be what is ordinarily known in the law as a *private* corporation. It is not in its character like a corporation created to carry on some private business, like the making of engines, or the manufacturing of cotton or wool. It is a quasi-public corporation, created, and only rightfully created, by Congress, because it was to carry out a public purpose and object. The intent in making this munificent grant of lands which belonged to the people of the United States, of making this most advantageous loan of the people's money, to these corporations was to effect a public, not a private purpose. Had Congress the right to donate to a private corporation, in the ordinary sense, twenty-one million acres of the public lands of the people, of great value? Had Congress any right to loan to *private* corporations over $50,000,000 of money upon most advantageous terms to them, as the law is adjudged by the court to be? I do not understand that Congress had or has any such right, acting for the people of the United States; but Congress may have authority to create a corporation, to delegate to it the right of eminent domain, which cannot be granted to any individual or purely *private* corporation, to empower it to take a citizen's property without his consent to effect a public purpose. Had Congress a right to make the grants which it did to these corporations, except and because they were agencies of the Federal Government to construct and maintain a public highway from the Mississippi to California, upon which should be

transported soldiers, public stores, mails, &c., for the Government, and which should be a quasi-public highway for the people of the United States for all time?

In dealing with this question it has seemed to me important to bear in mind that the corporation was created, and rightfully created, only because it was to effect a great public purpose, and that to enable it to effect this purpose the franchises were granted and the donations and loans were made.

I think, sir, when we come to exercise this power reserved in the comprehensive language which we find in these acts of Congress in reference to a corporation of this character, we certainly have a right to legislate and so control and so regulate its action that it shall subserve the end for which it was created. When we do that we are, as has been well said, legislating to keep it in the very line of duty for which it was created and endowed with property and privileges. Congress in the original charter or acts of Congress creating the corporation did reserve in clear language the right at any time to alter, amend, and repeal those acts. The obvious intent by this reservation was that if the corporation failed to perform the duty which it assumed and was obligated to perform, Congress could add limitations, restrictions, and regulations, and make it perform that duty. To aid the corporation Congress by the act of 1864 allowed it to borrow money on a mortgage which is a prior lien on the road to the lien of the United States.

Now, if Congress ascertains that instead of doing what prudent business men would do, what a well-managed corporation would do, these grantees are misapplying the means in their hands, what is to be done? The debt owing to the United States in the year 1900, as it is computed, will be over $123,000,000, principal and interest; and if the corporations are proceeding to divide their earnings and make no provision for paying that debt, and the other large debt, which comes due at the same time and is secured by a first lien on the property, the road will be sold out on the prior lien and not only will the Government lose its money which was loaned, but the object and purpose of the acts of 1862 and 1864 and of the land grant and loan will be defeated. The corporation was created and the grants made that the people of the United States, not for twenty years but for all time, should have this great highway maintained for the benefit of the Government and people of the United States as well as the stockholders. If now Congress see, as any man must see, that if the corporation refuses to create a fund to pay this $123,000,000 which will be due the Government in the year 1900, refuses to accumulate or provide a fund to pay the debt due the first-mortgage bondholders, the road will be lost for the beneficial purposes which were intended to be derived from it by the Government under the provisions of the charter, and if that is so, if there is danger of this, then under the right to alter, amend, or repeal we can interfere. If the Congress that passed the law did not guard sufficiently against such a result, then if the power reserved means anything of value to the Government, may we not now by amendments require the corporations to set apart as a sinking fund such portion of their annual earnings and of their income as shall pay off the first-mortgage debt at maturity, and which will pay to the Government at least a reasonable portion of this $123,000,000 that will be due for the money loan?

In my judgment we have the right to do so. In my judgment if Congress should grant such an amount of property and such rights and franchises and make such a loan without reserving control over

the corporations and their directors to compel them to administer the property so that the road should be preserved and the debts paid, Congress would have failed to do its duty to the Government and people of the United States. It would have neglected to provide any reasonable security to compel the corporations to maintain and operate the railroads and prevent their sale on the first mortgage.

In the proposed legislation Congress will not, in my judgment, violate in letter or spirit the contract contained in the acts of Congress. This legislation is to protect the property of the corporations and compel them to perform their duty to the Government and the public, and I, with great respect to others who may differ from me, cannot see how we impair any contract we made with them by the bill reported by the Judiciary Committee. We granted them all these things for this great purpose, this beneficial purpose to the Government and to all the people, that there might be built across this great country connecting the East and the West a great road which should be kept up. And now when a law is proposed which simply says "we are going to require you to administer your affairs and your means so that you shall pay your honest debts, and thereby preserve this road," I cannot understand how this justly can be said to be a breach of any contract made by the acts of Congress with these corporations. We simply make them do what every prudent board of directors should do which means to pay its debts and protect its property; we simply make them do what every prudent business man ought to do who means to pay his debts, not to divide among stockholders or partners all the income from the property, and then when the debt to the Government runs up to over $123,000,000, principal and simple interest, and the first-mortgage debt is due and unpaid to over $50,000, allow the railroad and its appurtenances to be sold. Because Congress will not permit this to be done and proposes to control the action of the boards of directors so there shall be annually set apart a portion of their income as a sinking fund to pay these debts or a portion of them at maturity, it is said we propose to violate the contract made by the Government in creating and making loans to these corporations.

I insist we do no such thing in the sense claimed by the opponents of this bill. The fact that the money for this sinking fund is to be paid into the United States Treasury is in no sense requiring the debt to be paid to the Government before it is due by the contract. The proposed law requires the corporations to pay into the United States Treasury annually a portion of their income, to be invested at semi-annual interest and the interest to be reinvested as it accrues, to make a sinking fund to pay these debts when due. The corporations have the benefit of interest on their money in the sinking fund, compounded semi-annually, while the Government is only to have simple interest on its debt, paid when that debt becomes due in 1900. This is not making these corporations pay the Government debt now or at any time before it is due by the contract. I agree that if a sinking fund is created by act of Congress, as is proposed by this bill, and if through any mismanagement of the Treasury Department the money should be lost, the Government should be the loser. Therefore it is right toward the corporations and wise for the Government and other creditors to have the contributions for this sinking fund paid into the Treasury of the United States and invested by it in a mode which will keep it at interest safe. We are not attempting to make the debt due now and applying the money on the debt, but the money is paid into the United States Treasury as a fund belonging to the cor-

porations, and we give them the benefit of its reinvestment every six months and they will get interest on the interest until the debts are due. I do not think this is breaking the contract or impairing the contract, or acting in bad faith or unfairly toward these corporations. It is a reasonable and proper exercise of the power reserved to the Congress "to alter, amend, or repeal" by the acts of 1862 and 1864.

Sir, the question as to what may be legitimately done by legislation by virtue of a power like this reserved in an act creating a corporation is important to this Government as to the great corporations under consideration in which the Government and people of the United States have so large an interest. It is important in reference to other corporations which have been or may be chartered by Congress. It is important in reference to the creation of corporations by State Legislatures. All the States have granted charters, reserving in some form the right to alter, amend, and repeal them at pleasure. It is a power that has been regarded as of great importance to the welfare of the people, and is often exercised to their advantage, and I know of no case where it has ever been used to destroy the just rights of those incorporated. It has been often exercised to secure the fulfillment by especially these quasi-public corporations of their duties to the public and to their creditors. The very fact that the power exists is a great safeguard to the public and a wholesome restraint upon those controlling corporate powers.

Now, sir, I wish to call the attention of the Senate to some cases which have arisen in the State of New York, which have been adjudicated by the courts of that State, and which adjudications have been affirmed by the United States Supreme Court; and I will ask then whether this bill of the Judiciary Committee is as broad and far-reaching an exercise of this reserved power to "alter, amend, and repeal" as was exercised by the Legislature of New York in enacting statutes which have been held to be valid and constitutional by the courts. These statutes were passed by State Legislatures, which are expressly inhibited by the Constitution of the United States from passing any law impairing the obligations of contracts. I will refer to only one or two authorities, because the question has been very fully debated.

In 1838 the Legislature of New York passed an act to authorize the business of banking. I need not state the details of it. It authorized persons to associate and organize a corporation under and by virtue of the act, to deposit securities with the comptroller of the State to secure the payment of the bills issued to circulate as money, and do the business of banking. Now, observe what a contract the Legislature made with the persons who accepted the law and organized a corporation under it. It provided:

> That any number of persons may associate to establish offices of discount, deposit, and circulation upon the terms and conditions and *subject to the liabilities* prescribed in this act. (Section 15 of the act.)

This is a pretty strong provision, that the corporators are to be subject only to the personal liabilities prescribed in the act. It then provides for articles of association to be signed, acknowledged, and filed, and then comes section 23. Now mark it. Here is the contract which the corporators, the stockholders, accept from the State in reference to individual liability:

> No shareholder of any such association shall be liable in his individual capacity for any contract, debt, or engagement of such association, unless the articles of association by him signed shall have declared that the shareholder shall be so liable.

The State says to the shareholders, you shall not be personally liable unless you have expressly agreed that you would be for the debts of the corporation.

In 1844 Oliver Lee & Co.'s bank was organized, and the associates in express language provided in the articles of association that they should not be liable in their individual capacity for any of the debts of the corporation, and went into business. The law contained the reservation, which is in this language:

> The Legislature may at any time alter or repeal this act.

In 1846 New York adopted a new constitution, one provision of which declared that dues from corporations shall be secured by such individual liability of the corporators as may be prescribed by law.

In 1849 the Legislature passed a law to enforce the responsibility of stockholders in certain banking corporations and associations as prescribed in the Constitution, and providing for the prompt payment of debts against such corporations and associations. This provided that where any banking corporation issued bills after the 1st of January, 1850, its stockholders should be individually liable to the amount of their stock, respectively, for the debts contracted after that time. In 1857 the bank became insolvent and proceedings were taken under the law of 1849 to enforce the personal liability of the stockholders. Here is a case where the Legislature made a contract in plain terms, and which, but for the reservation contained in the law to alter, amend, and repeal, the Legislature could not have changed, or impaired, never could have imposed any personal liability on the stockholders. The power to alter, amend, and repeal was reserved, and the Legislature subsequently did impose personal liability on the stockholders for the debts of the corporation. The supreme court of New York held the law constitutional as a legitimate exercise of this reserved power. The court of appeals without dissent, if I recollect aright, affirmed that judgment. The case is reported in 21 New York Reports, 9. The case was brought to the Supreme Court of the United States and the judgment was affirmed. (1 Black's United States Reports, 587.) The only question before the United States court was whether the law imposing the personal liability on the stockholders was constitutional or not. Each of the courts held that under the power reserved the Legislature had authority to pass the law of 1849. Mr. Chief-Justice Denio, a very conservative and able judge, delivered the opinion of the court of appeals of New York. He and the court held that under this reserved power the Legislature had authority to pass the law imposing upon the stockholders this personal liability for the debts of the corporation. In his opinion, he says:

> The question before us is, therefore, narrowed to a consideration of the effect of the provision in the general banking law by which the right is in terms reserved to the Legislature to alter or repeal it at any time.

The court held that the Legislature could by virtue of this reserved power alter and change the contract made by the charter with the corporators, that they should not be individually responsible for the debts of the corporation so as to make them responsible for such debts. The court of appeals of New York decided in this case that the provision of the general banking law reserving to the Legislature the power to alter or repeal formed a part of the contract with every association organized under that act, and that the State could modify it without infringing the Federal Constitution against laws impairing the obligations of contracts. It was urged upon the court that some of the stockholders in corporations organized prior to 1850, had become such, relying on the provision of the charter that they were

not to to be individually held for the debts of the corporation; and that they could not prevent the corporation continuing to circulate bills after January 1, 1850. But the court answered this, saying in substance, that although they could not prevent the corporation from continuing to issue bills, after January 1, 1850, by which the personal liability attached under the act of 1849, nevertheless the latter act was one which the Legislature by virtue of the power reserved in the charter had constitutional power to pass.

There is another case decided by the courts of New York. This arose under a special charter. In 1834 the Legislature created by a special act what was known as one of the safety-fund banks. The charter was in the ordinary form, creating and granting power to the corporation to carry on the business of banking without any individual liability of the stockholders for the debts of the corporation. The act of incorporation contained a provision that the Legislature might at any time alter, modify, or repeal the same. This corporation continued its business after this law of 1849 and became insolvent; and the stockholders were made liable under the last-mentioned law. The case was decided after the court had decided the case of the Oliver Lee & Co.'s bank above referred to but before that decision had been affirmed by the United States Supreme Court. It is reported in 22 New York Court of Appeals Reports, 9. In delivering the opinion of the court in this case, Mr. Justice Comstock says:

> Within the power here reserved the Legislature would have the right to pass the statute of 1849 and to impose the very liability now in question, even if the constitution of 1846 had never been adopted. This proposition was necessarily involved and was determined in the case of Oliver Lee & Company's Bank. In holding that a personal liability could be lawfully imposed upon the shareholders in that bank the decision was placed upon the reserved right to alter or repeal the general act under which it was incorporated.

These cases were decided by the court of appeals of New York and by the United States Supreme Court on the ground that the reservation of a power to the Legislature to alter, amend, and repeal the act under which the corporation is organized and by which the government grants and the corporation accepts and receives rights and privileges authorizes the Legislature subsequently to change the law and impose heavy liabilities upon the corporation and its stockholders from which they were in express terms exempted by the act of incorporation.

Now, sir, looking at these adjudications as to State laws and remembering that here the question is simply whether Congress may require this corporation to so manage its business, to so husband its earnings or a portion of its earnings and income that it shall maintain and operate the road forever and shall pay back when it becomes due the large loan made to it by the Government with simple interest, it seems to me that the bill of the Judiciary Committee is clearly within the scope of the power reserved to Congress by the acts of 1862 and 1864 if anything of value is retained by the reservations. The Judiciary bill merely controls the corporation in the administration of its property. Certainly when you remember that the United States courts have decided that a State may legitimately require a railroad corporation to take less fare or freight than was authorized by the charter, being a State law under which it was organized, we are simply legislating so that the corporate property shall be preserved for the benefit of the public as well as the stockholders, so that the debts of the corporation shall be paid when due, and the railroad shall not be sold on the first mortgage, to the detriment of creditors and stockholders. It is for the benefit of both creditors and stockholders that there

should be a sinking fund created from the annual receipts of the corporations to meet the debts when these enormous debts become due at a future day.

This is a measure of common prudence; one which, if the stockholders could not or would not inaugurate, through their board of directors, their entire property might be sold and sacrificed without even paying the just debts of the corporation. The property would have to be sold on the mortgage, and we all know how a few men of large wealth can then become the owners of a railroad at less than one-half of its real value.

I submit, therefore, that this bill is right and should become a law. It is not a law in violation of the contract of loan made by the Government with these corporations. This bill does not assume to make that debt due now or a day sooner than it is payable by the terms of the act of Congress, which is the only contract on the part of the Government. It is a law in aid of carrying that act into effect, promoting the performance of the obligations and duty which the corporations assumed and which the public good demands. If Congress had loaned this money, payable with simple interest in the year 1900, to the amount of $123,000,000, and had not reserved power to regulate and control the corporations so they should not waste the property or divert it from the public use for which it was intended, then Congress, in my judgment, would have failed in its duty to the people of the United States.

I have only a suggestion or two more to make. I believe that Congress should not have passed the acts of 1862 and 1864 without reserving this power over the corporations created and granted privileges and property thereby for an important public purpose and to promote the public good, I do not think we should now bargain or contract this power away. The power in Congress to control and regulate these corporations should be retained that these corporations may be required by the exercise of this power, if necessary, to discharge all the obligations they assumed to their creditors and to the public. There is no danger that there will be harsh or unjust legislation by Congress toward them. There should not be. I would not unite in any legislation that looked to me like dealing unjustly or unfairly with either of these companies. It is dealing justly with them and right toward the people of the United States not to permit them to make large dividends to stockholders while they make no provision for paying their just debts at maturity. They cannot complain of Congress requiring them out of their income to provide a sinking fund which shall pay the Government and all other creditors the amounts owing them at maturity.

I think we owe it to those we represent, we owe it to the Government, we owe it to the stockholders, that Congress should retain the power to intervene where it is necessary to preserve the property, to preserve the road, to have it kept in running order, to have the stockholders own it after the debts are paid, and to prevent its being sold on the mortgages. I shall therefore vote against the amendment proposed by the Senator from Maine, [Mr. BLAINE,] by which it is proposed to contract by this bill with these corporations in reference to the exercise of this reserved power by Congress in the future. I believe that Congress has legitimate power to pass the bill reported by the Judiciary Committee, and that it is important for the public good and just to these corporations that this bill shall become a law, and hence I shall vote for its passage.

The PRESIDING OFFICER, (Mr. CAMERON, of Wisconsin, in the

chair.) The question is on the amendment of the Senator from Maine [Mr. BLAINE] to the twelfth section of the bill.

Mr. EDMUNDS. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. EDMUNDS. Mr. President——

Mr. THURMAN. With my friend's permission, I wish to say that several Senators who are quite unwell and wish to go home, have asked me if I would request a vote to-day. Knowing that there are several Senators who want to speak, and who are not well enough to sit out the bill to-night, I said to them that I should not ask for any vote either on the bill or on the amendments to-day, but would ask the Senate to-morrow to finish the bill.

Mr. DAVIS, of Illinois. I move that the Senate adjourn. The Senator from Vermont does not want to go on till to-morrow.

The PRESIDING OFFICER. The Senator from Illinois moves that the Senate do now adjourn.

Mr. CONKLING. If the Senator will give way I move that the Senate proceed to the consideration of executive business.

Mr. DAVIS, of Illinois. I prefer not; but I will withdraw my motion that the Senator may test the sense of the Senate.

Mr. SARGENT. I wish to say a few words.

Mr. CONKLING. I withdraw my motion for a moment to renew it after the Senator from California concludes.

Mr. SARGENT. During my temporary absence from the Chamber the Senator from Ohio [Mr. THURMAN] called attention to a resolution I introduced in January, 1876, which he seemed to consider somewhat inconsistent with the position I have taken on this bill. Before I left the Chamber I had heard the Senator declare that he did not intend to use the amount of brains that God had given to him for the purpose of mousing through the RECORD; that he would consider himself humiliated if he turned over the pages of that venerable volume for the purpose of detecting inconsistencies in his opponents, and he thought a great measure like this ought not to be opposed by such means. I am compelled to the inference that my friend thinks it is perfectly right to oppose amendments to the bill by the same process of mousing through the RECORD, and his mousing has been rewarded by the discovery of the resolution to which he refers. That, however, is entirely a matter of taste. I do not myself think there is any impropriety in looking over the RECORD to find out what Senators themselves or others may have said in reference to measures, and occasionally a great deal of information may be obtained upon the merits of the subject under discussion in that way.

But I wish to say that the Senator will find, by reference to the remarks I made before he made those to which I now refer, that I spoke, with some earnestness at least, in favor of the establishment of a sinking fund for the protection of the Government, insisting at the same time that it would be better for the credit of the companies; and I also said in those remarks that I did not think it was right to take the one-half transportation and the 5 per cent. net earnings, which belonged to the Government, and put them in the sinking fund, for the Government ought not to be required to pay interest on its money for the benefit of these companies, and therefore I objected to the Railroad Committee bill for that reason. I, however, did indicate such amendments as I thought the Judiciary Committee bill should receive.

Now, sir, in my judgment and according to my best recollection, there is nothing inconsistent in the position which I have taken on

this matter with that which I proposed in the resolution which gave original jurisdiction to the Judiciary Committee, as the Senator said. I do not object to this measure because it emanates from the Judiciary Committee, for I have a very high respect for that body of gentlemen. I think they are able and believe them to be conscientious. That being so two years ago, as now, I was in favor of their reporting a bill, but I certainly did not commit myself to any bill which they might report, no matter how harsh it might be or how extreme, or upon whatever theory it might proceed. I reserved to myself the right in that as in all matters to exercise my own judgment and cast my votes as I saw fit, and to advance such arguments in favor of those votes as it seemed to me was due to myself to explain my position. I therefore say, Mr. President, that there was nothing in that matter at all inconsistent, in my judgment.

In that same resolution I did propose that the Government should look into certain matters with reference to the twenty-four-million-dollar contract of the Contract and Finance Company, and that I referred to also in the remarks I made this morning and called attention to the fact that I did so, but I said with reference to that that as such investigation was not made, as Congress had for years passed the thing over, and then when their attention was specifically called to it and the legal committee of the Senate were directed to institute such investigation as was necessary, still it was not done, and that now it ought not to be brought in at this late day, when other parties had invested in this stock and in these bonds, to make weight against them.

If, however, the Senator can find any comfort in the consideration that he has convicted me of inconsistency, he is welcome to any comfort of that kind. I desire to say, however, that I prefer to do what I think is right at the present moment or at any moment which may be presented; that I am not bound to follow any convictions I may have had heretofore, provided I have seen reason to change them. I believe in the old adage that the wise man changes often; another class never changes. I am open to conviction and learning, and if any one can have listened to this long debate and not have acquired any ideas either for or against the measure, then his ears are certainly deaf.

Mr. BAYARD. I understand the Senator to insist upon retaining and exercising his power to "alter, amend, and repeal" at any time?

Mr. SARGENT. I do not. I believe it must be by contract with these companies in the same spirit as by the act of 1864, when there were modifications made in the law of 1862, the assent of the companies was required. That course is followed in all State Legislatures, and in all the legislation of Congress relating to such things. I do not believe we have a right, simply because we are, as we call it, sovereign—although we are far from it in some respects, the States being much more so than we are—I do not believe that for that reason where we are contractors we stand in any different relation than private parties would stand to each other.

Mr. THURMAN. Mr. President, if my friend from California had heard the remarks I made, he would have found that I referred to his resolution for a wholly different purpose from that which he attributes to me.

Mr. SARGENT. I read the Senator's remarks from the Reporter's notes.

Mr. THURMAN. I do not think it was for the purpose of convicting him of any particular inconsistency or condemning him for a

change of opinion, if such a change had taken place. I fully concur with him that a man is made of very poor stuff who may not alter, amend, or repeal, as my friend from Delaware suggests, his confirmed convictions. That is a suggestion of my friend from Delaware, and I think a very wise and philosophical one.

Mr. SARGENT. I agree with the Senator, if that was his meaning.

Mr. THURMAN. Mr. President, what I alluded to the resolution of the Senator from California for was this: as I had said I thought there had been an attempt here on the part of those who opposed the bill to censure the Judiciary Committee for going too far, and I cited the resolution of the Senator from California which first gave that committee jurisdiction of the subject to show that that resolution went further than the bill which is now under consideration. That is all. I certainly have no disposition to make a debate upon a measure which ought to stand upon its own intrinsic merits depend at all upon any personal consideration. I never have advocated or opposed a measure on any such ground, and I never shall.

As to what the Senator has said about the power to amend, alter, or repeal, that that is with the assent of the companies, if that was all, it might as well be stricken out of the charter at once, because without it we could make any legislation we pleased that the companies saw fit to assent to.

I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After twenty minutes spent in executive session the doors were reopened, and (at four o'clock and twenty minutes p. m.) the Senate adjourned.

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APRIL 9, 1878.

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THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. EDMUNDS. Mr. President, I beg everybody to believe that I am not going to deliver an oration and to hope that I shall finish just as soon as a condensed statement of what it appears to the committee ought to be now stated can be made. This affair has prolonged itself so much, and so much of discursive learning and eloquence has been devoted to it that it is not at all surprising that a good many Senators may feel that it has come to be a bore; but there is, after all, this matter before us; there is the solemn responsibility which we as the rulers of the commonwealth of this country are bound to perform in doing justice between these corporations and the people of the United States; and in order to do that we must understand exactly how the case stands. The Senator from California [Mr. SARGENT] and some other Senators have, with the apparent purpose of producing impres-

sions against the recommendations of the committee in the minds of Senators, dwelt with eloquence and with persuasiveness upon the great benefit that these companies have done to the people and to mankind at large by the construction of these roads, as if therefore either Congress has no power to regulate their future proceedings, or that we ought to condone (as the expression of the Senator from California was) this debt not only to ourselves but to all the other creditors of the corporations who stand just as we do, entitled to the protection of Congress for the preservation of their interest just as much as the people are entitled to the protection of Congress for the preservation of their rights which as tax-payers are now drawn into peril.

Mr. SARGENT. I presume the Senator does not wish to misrepresent me.

Mr. EDMUNDS. By no means.

Mr. SARGENT. Did the Senator understand me that there should be any condonation of this debt?

Mr. EDMUNDS. No.

Mr. SARGENT. I said nothing of that kind.

Mr. EDMUNDS. No; the Senator said nothing of that kind, but the Senator used the term "condonation" over and over again applied to one part of these transactions, which condonation, if agreed to and made, would have exactly the effect that I speak of, of diminishing the honest resources of these companies in a very large degree, and thereby diminishing the chances of their creditors, including the people of the United States.

Mr. SARGENT. Now, if my friend will allow me—I certainly do not wish to interrupt him causelessly—I did not use the word "condonation" once nor many times in that connection at all. I did not use it in reference to the debt, its disposal, or the manner of its being incurred. I simply said that with reference to certain alleged offenses which had been brought in here to make weight against the companies, by previous non-action of Congress there had been a condonation, but I did not argue that for that reason the debt should be forgiven or any part of it.

Mr. EDMUNDS. Then, Mr. President, I do not precisely understand the impulse which should have led the Senator from California and many others who have spoken of equalities of rights and of fair play, as they call it, to these companies, and of tenderness, of liberality, to press upon the Senate repeatedly and continually as affecting this question of law, of our right to amend these charters, and this question of business prudence and duty to the creditors of these companies to preserve their funds for their benefit, unless it was to effect some purpose or other. The Senator from California rarely talks without a purpose, never I may say. His mind is clear and far-reaching; and when he delivers to this body a speech like that which I had the pleasure of listening to, laying stress more upon the benefits that these companies have conferred upon the people of the United States and upon the Government in respect of cheapening transportation, it must have been for the purpose of leading Senators either away from the real question that my friend now admits is here, or of persuading them to mitigate and to blind the intellectual processes, by which, first, we are to understand the present condition of affairs and our rights, and, second, those wholesome regulations which prudence and justice require should be adopted. But I am glad to know that my honorable friend now, if he ever was suspected of occupying such an attitude, does not; and so we may dismiss, I take it, from the arena all these considerations, all that has been pressed

upon us about the enormous benefactions which these great monopo- lies have bestowed upon the people of this country—exactly such benefactions as the Baltimore and Ohio Railway Company, as every railway company in every State has bestowed upon the people of its State, although in many instances (not in respect to the first company I have named but in many instances in all the States) we know that these benefactions have grown out of prodigious corruption, out of prodigious fraud on the part of the managers of those corporations, not only against the public in unjust and coercive rates, but against their own stockholders and creditors who have contributed the money by which the enterprises were inaugurated and carried on. And yet the benefit to public considerations is the same. A bankrupt and cor- rupt railway corporation that is only the spoil upon which its direc- tors or its trustees or its receivers fatten, nevertheless carries your grain, and your coal, and your beef, and your wool, and your iron, and your citizens, from one part of the country to the other; and such companies are in that sense benefactors. So, Mr. President, in the same sense would be the benefactions of a mob or of a public enemy that might break into the Treasury of the United States to-day at New York—not here, I suppose, for there is not much money here, I presume—and seize the one hundred millions of gold that is there, and give it to the poor; there would be bread and clothing and shelter for the poor and there would be benefaction.

Then Mr. President, it does not do to have our minds warped or prejudiced in the least degree *pro* or *con* in respect to these affairs by the circumstance that these railways have diminished the total ex- pense to the Government of the United States in transportation by their construction. It is not, by the way, a demonstrable problem that they have. There are many other things to be taken into the account if you were to strike a balance-sheet in reference to these things, because you will perceive that an estimate based upon mili- tary expenses of a given year in respect to the Indians or upon the cost of transportation of the mails may be entirely a fallacious one the next year. It depends upon the circumstances of each particular year; and if it be a benefaction, as I have said, the United States by the expenditure of very little more money than the face of these bonds that it gave to these companies could have built the line itself and it would have belonged to the people at this day, so that the bene- faction part of the argument which is offered to convince us either that we have not the power to do the thing that is here proposed or that having the power we ought not to do it, may be entirely laid aside.

What, then, is the state of this affair? The first great question, and one which I shall only discuss very briefly, is the question of our power, in the constitutional sense, legally to make the requisitions upon these companies which the bill of the Judiciary Committee pro- poses. My learned friend from Ohio, [Mr. MATTHEWS,] not in his seat, the honorable Senator from Georgia whom I see before me, [Mr. HILL,] and many others have maintained with pertinacity and with audacity—and I use that term in its best sense of courage that com- mands our admiration, however much it may lack our respect—that really the powers of Congress, as the grantor of all these privileges which the companies now exercise, by whose breath alone they can levy a dollar to obtain income, by whose authority alone they ex- clude similar enterprises, are absolutely beyond our reach. Argu- ments that have been advanced in the courts of the States by ingenious counsel, that have been advanced before legislative committees for

the last twenty years by counsel and by lobbies as they have been here, arguments that have been advanced recently in the great tribunal of last resort near us, in cases coming from the States, are brought forward here and repeated as if they were fresh, and as if they were still potent for consideration when every one of them has gone down, one by one, before the calm authority of judicial reason and judicial decision. And yet this Senate appears to be treated as if it were really a backwoods jury that had never seen a law-book or a lawyer before, and to whom as before a justice of the peace once in the State of Vermont, counsel could go and urge that the bankrupt law of 1842 was totally unconstitutional, and therefore a note that had been entirely discharged and barred by that could be still recovered. That is what we are now treated to, Mr. President, and as I say, therefore, while I admire the courage of that sort of arg ument, I cannot give it the homage of my absolute respect.

These companies were authorized by the act of 1862 to do a great many things. I will take the Union Pacific for instance. The act of 1862 authorized the formation of that company; and in order to guard against what has happened since under the act of 1864,—the consolidation of its stock into the hands of three or four great operators who thus become the kings of the ring and the rulers of the corporation, and so the rulers of all that section of the country, in a certain sense, over which the railroad runs, the lords paramount of every hamlet and every city in the two thousand miles that stretch from the Mississippi to the Golden Gate—it was provided in the act of 1862 that no stockholder should hold more than two hundred shares himself of the stock, so that there could not be this consolidation of power that elects Senators, appoints members of Congress at conventions, regulates local elections in all the counties through which they go by their capacities of frequent intercourse with the people and by having a constant agent in the station-agent and in the trackman to do the electioneering which the President of the United States has lately advised members of his official household through all the offices not to do. But when we came to the act of 1864, which, by the way, was an amendment of the act of 1862, not with the assent of the company on the face of it, but which exercised the plenary power of Congress, bear in mind, that was reserved in the act of 1862 to amend, that was conveniently repealed, and we have since seen that the evil foreseen by the act of 1862 and guarded against has come, and that consolidated power (which is the essential theory of a monopoly) has come to be so potent that it is always against a stress of difficulties and a multitude of objections that the mere weight of justice and the interests of the people and the creditors of such corporations can make way at all. If these very companies at this moment were under the force of the act of 1862 requiring a diffusion of this stock, do you imagine, Mr. President, that the lobbies of this Senate would be filled with persons engaged to promote the interests of these companies and to defeat legislation that is not perfectly agreeable to them, at the expense of the stockholders, at the expense of the creditors of these corporations, at the expense of the Treasury of the United States? I imagine not, but it is done.

It was also provided in the act of 1862, made for these purposes to which I have alluded and which I need not further refer to of public benefit by a public corporation, and also for the private advantage of the enterprise of the people who engaged in it, that all the money advanced by the United States to these objects should be a first mortgage not only upon the road-bed and the track of the company when

built, but upon every description of the property that the company might possess. I do not spend your time to read it but I know that I state it correctly; I believe that it has been stated before. It is provided—and that brings me to the first point in the short statement that I have to make about this affair in regard to the net earnings—that—

[said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par, and after said road is completed, until said bonds and interest are paid, at least 5 per cent. of the net earnings of said road shall also be annually applied to the payment thereof.

Not a limitation to which the legislative authority of the United States bound itself that no more than 5 per cent. of net earnings or exactly that should be paid to the Government, but as a command and declaration of duty on the part of this company that not less than 5 per cent. should be paid. What was the object of that clause? Let me take it upon the narrowest view that the Senator from Ohio [Mr. MATTHEWS] or the Senator from Georgia [Mr. HILL] or the Senator from California [Mr. SARGENT] can suggest. Here is a law which says that not less than 5 per cent. of the net earnings shall be paid in. Does not that imply that under circumstances which make it fit and proper, more than 5 per cent. may be required, when to the very same act and as a part thereof, in the very same clause, it is provided that Congress may change the regulations of the operations of this company according to its own sense of justice and right in order that the great object of the act may be carried out, that the road may be perpetually kept up for the benefit of the people and the Government of the United States? And yet Senators say you are interfering with vested rights when you undertake not to increase the percentage of net earnings, but merely to define so that there shall be no more equivocation and higgling about it, what "net earnings" are, and when you undertake to define them according to the common sense of universal mankind, according to the same definition that if you will take the railway reports of 90 per cent. if not 99 per cent. of all the railway corporations in this country to-day you will find to be defined exactly as this bill from the Judiciary Committee defines them; and that is the clear balance that is left after paying the operating expenses of the concern.

I see here before me the Senator from Iowa, [Mr. ALLISON.] I saw only a day or two ago the annual report of the directors to the stockholders of that great corporation, the Chicago, Burlington and Quincy Railroad Company, that covers two States, not only Illinois but Iowa; at any rate it extends indefinitely westward from Chicago,—a corporation I am bound to say that according to all its history and all its reputation has been managed with high fidelity and with great advantage not only to itself and to its stockholders, but to the people of the country that it traverses. I happen to observe in that report that where they figure out the balance of net earnings, they figure it out and they have always done so, exactly in the manner that this bill of the Judiciary Committee defines "net earnings." They do not take out of their assets received from their various sources of income the interest that is due to their respective bondholders and creditors before they ascertain what are their net earnings, but they take "net earnings" to mean what every honest man who is not a lawyer would at once say they meant, what you get in net, taking out from that which you thus get in the expense you have been put to in getting it. That is what "net earnings" means, and I repeat without the

fear of contradiction, although I do not do it upon an examination, that you may take 90 per cent. of the reports of all business corporations, railway as well as others, in the United States for the last twenty years, and you will find that the term "net earnings" has come to be understood just what it was understood to be in the dictionaries when the term was invented. It refers to the earnings, the clear earnings, not to the amount of money that may be due from the party that earned it. You might say upon the other principle that a farm that had a mortgage upon it for more than it was worth, and yet could raise fifty thousand bushels of wheat a year worth a dollar a bushel at an expense of $20,000, had no net earnings, that the farm itself was absolutely worthless, although the man had borrowed on it five times what it was worth already and owed a debt for it which was greater than the value of the farm: yet the farm was utterly worthless because it could not get any net earnings! Of course that is not so; and yet Senators stand up here and say that we are violating the Constitution of the United States in defining "net earnings," and that in the face of this provision of the statute which authorizes us to call for 10 per cent. of the net earnings if the just judgment of Congress thinks that is proper and necessary. Notwithstanding that, they stand up here and contend that this definition which the committee endeavor by this bill to put upon "net earnings," to save disputes, to make it clear if by any ingenious sophistry any court could be persuaded that it now in point of law means something else, is really an outrage upon the rights of these corporations, that it does them injustice and wrong!

Mr. President, whatever may be believed here, the just judgment of mankind, to which we sometimes appeal, will, I am sure, vindicate the report of my honorable friend from Ohio [Mr. THURMAN] upon that subject. There are a good many other things, but I cannot spend your time to read them, that are of great interest in this first act of 1862. I have stated, I believe, that the act of 1864 is an amendment of the act of 1862, and that its going into effect did not, as my friend from California [Mr. SARGENT] stated yesterday, depend upon the assent of the companies. The act of 1864 is an act of affirmative and coercive legislation. There is no provision in it that the act of 1864 shall not take effect until either company assents to it, and there are half a dozen other amendatory acts in the book before me prepared by the companies themselves, all brought together for convenience, no one of which undertakes to leave its going into effect, or any part of it having force, to the assent of the companies. What does that mean? It means that until now it had not been thought by the lawyers and the statesmen of Congress, it had not been thought by the lawyers and counsel of these companies, that where in the acts of 1862 and 1864 the right of alteration, amendment, and repeal had been reserved, however otherwise it might have been, it depended upon the assent of the companies at all what changes Congress should make in the regulation of their affairs; and so, as I say, while the act of 1862 required the assent of the companies, because then nobody had been bound, and the act of 1862 could not go into effect until the companies did assent to it, because they were not bound to assume the responsibilities which the act imposed upon them, every act afterward, from 1864 to this day, contains no such provision; every act afterward, without question, in either House of Congress, has exercised calmly and serenely, sometimes and more often in the interest of the companies, sometimes and rarely in the interest of the people and against their wishes, this power that the act of 1862

reserved, and which without it would exist, in my opinion, in respect of the objects we are now speaking of, to change the regulations upon which they stood.

The act of 1862 contains another provision that it is worth while to call attention to just now, and that is as to the number of directors, vital to the management of the operations of the company. The Union Pacific company was to have, I believe, thirteen, and the United States was to have two, appointed by the President. The act of 1864, passed, as I have shown you, not with the assent of the companies, not requiring their assent, provided that the number of directors on the part of the company should be fifteen, if I recollect correctly, and the number of Government directors should be five, altering the managing constitution of the company. Nobody ever questioned that power, I suppose; the power of amendment was reserved. It was questioned in the case of Miller *vs.* The State of New York referred to the other day, not upon the ground that if the Legislature had reserved that power in the charter between themselves and the corporation it would not have been good, but they said it had gone beyond that and that the city of Rochester only came in incidentally, and between herself and the company it was a contract that could not be changed. But the supreme court of New York and the Supreme Court of the United States overruled that. But in respect of the direct relations between this corporation and the United States, I suppose nobody can question, nobody has yet questioned, the propriety in point of law of the act of 1864 which changed the number of these directors.

I only refer to this as showing how complete the power of the United States is, not as an opposing party to a contract having hostile interests, but as a supreme and impartial judge controlling and regulating the exercise of these great monopolies and of the corporations who carry them on, to so constitute the management as to preserve justice and private and public rights; and therefore, if it should be found in respect of what is called the prorating question that the directors, as now organized, of the Union Pacific Railway Company do not carry out the true spirit of their charter in respect of this co-ordination of the resources of the company, it is within the competence and within the duty of the Government of the United States through its Congress to so change the management of that corporation by increasing the Government directors to a majority as to see to it that impartial and not selfish hands control the interests of these great corporations for the benefit of their creditors, and for the benefit of the public and equal justice to all. And the time may come, if the lobby still continues to be successful as it has been hitherto, a year ago and before—I do not speak of the lobby disrespectfully; it is a very good thing, no doubt, for those who use it—but if these companies, I will say, should be successful in now so entangling this legislation as to break it down by amendments proposed in their interest, or substitutes proposed in their interest, the time may come when the voice of the just judgment of the people will be heard in such a way that the management of this great corporation will be placed in the hands of impartial and fair and safe men, and that if our hands are to be tied for twenty-two years in respect of all the financial administration of these corporations touching not only the millions of our interest but the millions of the other debts that we are bound to protect, there will still be in the enforced sense of public justice from the people (which at last reaches us) a means of redress in regulating the management in such a way that the money will not then be squandered, and the stock run down

or bulled or beared to affect interests *pro* or *con* to the injury of creditors.

But I only refer to this to illustrate how potent, how pervasive everywhere through these acts is this omnipotent resource of justice and of right reserved to the Congress of the United States, not as an interested party, not as an opposing litigant, but as an impartial tribunal to whom the persons now claiming rights under these charters agreed in the outset, when they assumed the responsibilities of them, should be referred every question respecting their future management and operation and the protection of persons who should deal with them. That is it. It is not, therefore, Mr. President, any invasion of private rights; it is not any invasion or violation of the sanctity of contracts, but the very reverse, when, if the state of the case calls for it, this tribunal, pointed out and agreed upon by the parties who availed themselves of the benefits of these acts, is called upon in its sense of justice to so readjust the administrative regulations of these corporations as that their funds shall be preserved to the very sacred use to which they were designed, the discharge of their obligations. That is all there is to it, and it is to that, therefore, that we ought to address ourselves.

I ought to say, though, before I leave that part of the topic, as a mere matter of self-defense—it is of no interest to the Senate—that I think my friend from Ohio [Mr. MATTHEWS] went a little wild the other day when he undertook to convict me on the authority of Kent's lectures to his students up at Albany or New York, or wherever it was, that the right of visitation that I spoke of as being a right of Congress did not apply to a civil corporation, that it only applied to what are called eleemosynary corporations, that is, corporations founded by some private person for a charity, or a school, or something of that kind, who, he conceded, had the authority to visit the corporation and see that it did what it ought to do, and to compel it to do what it ought to do. Let me tell my good friend from Ohio in the first place that the power of visitation of a private corporation of the kind I am now speaking of is not a power that executes itself. The private visitor, the founder of a charitable corporation who has the right of visitation in its highest sense, is not able to go to a college or to a hospital and kick out the people who are then in by the force of his own personal strength. He has no more right to do that than you have who are the President of the Senate. His power of visitation is the power to require those things to be done which the true ends of the corporation call for, and when he has required and they do not obey what is the next step? The execution of it by himself? Not a bit of it. An appeal to the judicial arm of the Government to enforce the orders that he has made. That is visitation, as it is defined in the dictionaries and as it exists in common sense. Now, is there any such thing as it respects civil corporations? If my friend had looked a little further in Kent he would have found also the same thing I believe. I have not taken the trouble to look it up, but here is Angell & Ames; after speaking first of the eleemosynary part of it:

> In this country, where there is no individual founder or donor, the Legislatures are the visitors of all corporations founded by them for public purposes, and may direct—

Just as this Judiciary Committee bill does—

> and may direct judicial proceedings against them for abuse or neglects which at common law would cause a forfeiture of their charters.

And then they go on to speak of other inconveniences, and say:

If such inconveniences are found to be numerous and formidable in practice, the remedy, it is presumed, must be sought in legislative interposition.—*Angell & Ames on Corporations*, chapter 19, page 679.

Mr. President, that is a mere private matter between my friend and myself that the Senate does not care anything about, but as a lawyer much younger than my honorable friend from Ohio, who I am sorry to see is not here, of course I felt a little abashed to have the country that no doubt took a great interest in that question of definitions told that I had entirely missed my mark in saying that the power of the legislative sovereignty of the States and of the United States over corporations that they had established to regulate their affairs and compel them to do what the great objects of their charters called for by fresh legislation, was a power of visitation. Of course, as I say, I felt a little abashed to be told that that was an invention of my own, or that I had not read what he called the horn-books of the law. I dismiss that part of the subject as being of no interest to the Senate. It is entirely a question between my friend and myself.

Now I will take up just for a moment the question of net earnings again, and will be very brief about that. I had called the attention of the Senate in answer to the Senator from Georgia [Mr. HILL] and the Senator from Ohio [Mr. MATTHEWS] before, who were pressing upon your consideration the opinion of the supreme court of Massachusetts by Chief-Justice Shaw it is said, a later case than the one they referred to, of the Massachusetts General Hospital against the State Mutual Insurance Company of Worcester, which I had thought ran on all fours with this question of our power over the subject of net earnings, which as everybody agrees is the most difficult part of the bill in point of law. It comes nearer to the boundaries of our power in respect of controlling these corporations than any other part of it does, because this part of the Judiciary Committee bill requires a payment into the Treasury of the United States as a payment. It is not the preservation of the funds of the corporations, as the rest of the bill is, leaving them still the property of the corporations, and only operating as a legislative injunction against their dividing them up among the stockholders, but it requires a payment, and therefore there is great plausibility in the argument that says "if you make your definition of such a character that it requires the payment of a greater sum than the present want of a definition would require, then you are in effect requiring the payment of a greater sum than you did before, you are making us pay what is not due;" and that is the plausibility of the argument.

Now, see how easily it is answered by the case in 4 Gray's Reports. My learned friend from Ohio [Mr. MATTHEWS] thought it did not apply. Let me state it or read it partly so that you may see that it does, and then I shall have done with reading law-books to you. This was a bill "in equity for an account of one-third of the net profits made by the defendants from insurances on lives." The plaintiffs were incorporated in 1810 and were authorized to receive contributions and stock, &c., and so on, "for the purpose of making assurances on single lives, joint lives, and survivorships, * * * with all the powers and privileges, and subject to all the duties and liabilities, contained in the thirty-seventh and forty-fourth chapters of the Revised Statutes, so far as the same may be applicable to this corporation." This corporation was thus founded on authority to make insurances upon lives upon the mutual plan. They were to

have a guaranteed stock. "By section 7 of said statute 1844, chapter 187, it was provided that the defendants should, on the third Monday of January in every year, pay over to the plaintiffs 'one-third of the net profits, if any, which shall have arisen from insurance on lives made during the preceding year;' and by statute 1846, chapter 82, section 1, it was enacted that 'the net profits of the business of the mutual life-insurance companies incorporated in this Commonwealth, one-third of which they are required to pay to the trustees of the Massachusetts general hospital, shall be taken to be the excess of the dividend over 6 per cent. annually, payable by the said companies respectively to the holders of the guarantee capital stock actually paid in.'"

By this same act of incorporation, which I have not read but will state to save time—it is here and my friend from Ohio will see that I state it correctly—by this same act of incorporation of the defendants' company, they were authorized to have $100,000 of a guaranteed stock and were authorized to pay 7 per cent. interest upon that guaranteed stock. After that the Legislature by the act of 1846 said that in respect of mutual insurance companies that otherwise would not have any net profits at all, because they all went to the benefit of the people who were insured, the net profits mentioned in the old law should be considered to be the excess over a dividend of 6 per cent. annually upon that, thus cutting them down 1 per cent. and declaring that to be a net profit which in contemplation of law before was not net profit at all, nor anything like net profit. That was resisted, and the same kind of arguments advanced by my friends from Georgia and Ohio and all the rest on that side of this question were pressed upon the court and the counsel in stating it demonstrated just how it would work; he proceeded to say:

> The statute of 1846, chapter 82, which undertakes to declare what shall be taken to be "net profits" in mutual companies, is unconstitutional, so far as it applies to the defendants, who did not assent to it; because it attempts to compel the assured members to pay annually the sum of $166.67 more for the expense of insuring each other's lives than they were obliged by the terms of their act of incorporation to pay.

And he stated it exactly as it was. That was exactly how it would work out. Now hear what Mr. Justice Dewey says, after referring to some other questions in the case and working it down to this point:

> It expressly declares that the net profits for this purpose "shall be taken to be the excess of the dividend over 6 per cent. annually, payable by the said companies respectively to the holders of the guarantee capital stock actually paid in."
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> The only question is, therefore, whether the statute of 1846, chapter 82, is a constitutional act. It is said by the defendants that this act is unconstitutional, because it violates the vested rights of the defendants acquired under their act of incorporation. If this were so, the act can have no effect. But all acts of incorporation, passed since the 11th of March, 1831, which contain no express provision limiting their duration, are, by the provisions of the statutes of the Commonwealth existing from that period to the present, subject to alteration, amendment, or repeal. The act incorporating the defendants was passed in the year 1844, long after the enactment of the revised statutes, and was of course accepted by the corporators subject to the provisions of those statutes. This seems to put at rest all further question as to the constitutionality of the statute of 1846, chapter 82, and this being so, the defendants are bound by it, and must govern themselves accordingly."—4 *Gray's Reports*, 233.

That was the end of the case of the Massachusetts General Hospital and the defendants. The judges who composed that court that thus unanimously decided were Hon. Lemuel Shaw, the great chief justice; Hon. Charles A. Dewey, who delivered the opinion; Mr. Justice Metcalf; Mr. Justice Bigelow, who until lately was an eminent judge of

that court, and resigned not long since I believe; Mr. Justice Thomas and Mr. Justice Merrick, men all of them eminent, and deciding—and that is why I am almost inexcusable in reading such a case—deciding what every court in every State and at all times in respect of similar principles had already decided and have ever since, and this case is only interesting in the fact that it happens, not in respect of any new principle at all, to contain a state of fact which presents the exact point that this question of net profits does here, put in the strongest way that the Senators on the other side can put it.

So then, Mr. President, I think we may dismiss from our consideration any fear that we are going to be in danger of violating the Constitution of our country if we declare by this bill reported by the Committee on the Judiciary that the meaning of net profits shall be hereafter taken and understood to be the clear result, after paying the operating expenses of these roads, added to which—that has been referred to and answered already—for the mere purpose of convenience and as a matter that does not belong to it theoretically or philosophically at all, is the payment of the interest on the first-mortgage bonds, added, as I say, not because it diminishes what are the future net profits, but because as a matter of convenience between the Government and these people it is more convenient to put it in that way.

Then I wish to repeat to all gentlemen who doubt about our authority in point of constitutional law to pass this act, that everything that has happened in the history of these transactions contained in this little book which, as General Cass said, "I leave you to look upon"—everything that has happened since the act of 1862, which did require their assent, has been through the sovereign power of Congress reserved in the act of 1862 of alteration, amendment, and repeal, and after the act of 1864 reserved there, and that in no instance of legislation either favorable or unfavorable to these companies until now has it been proposed even to doubt the authority of Congress to act of its own supreme and just pleasure, or as the saying now is to make a bargain which is to tie up its hands for any length of time. It is reserved, Mr. President, to the Senator from Maine [Mr. BLAINE] to be the first man, and at this late period of time, to propose in any act regulating or creating a corporation or any part of its operations, the sovereign power of the great tribunal that imparts to it its gifts, that creates for it its monopolies, that is bound to stand between it and those dangers that monopolies always threaten people with—for the first time, I say, it has been proposed that an act of administrative justice which calls for the accumulation of a sinking fund, and which is nothing but an administrative act for the future that changing events may change the aspect of from day to day as other lines are built, as other men come into the management, as the stock is either run down or run up to please "bulls" or "bears" for private interest, that the hands of this supreme tribunal shall be tied behind its back, not in respect of anything that it has received to discharge a debt, because there would be the end of it without any such provision, but in respect of the future administration of the affairs of these companies so far as it affects the interests of the United States connected with this debt. Well, how far is that? Can there be anything done in respect of the administration of the affairs of these companies that does not affect the interests of the United States in regard to this debt? The salaries of their directors affect the interests of the United States in this debt, because they are a part of the operating expenses. Counsel fees paid to lawyers,

small sums to be sure, only $50,000 last year so far as heard from at present, to defeat the bill of last year, spent here at the Capitol—counsel fees anywhere for any purpose affect the interests of the United States in this debt, but our hands are tied by the amendment of the Senator from Maine. There is not the smallest matter of expenditure, there is not the smallest or the greatest matter of policy that these directors may engage in, either of combinations or pools or hostilities with other roads, that does not run, (as all roads it was said always ran to Rome,) straight to the question of affecting the interest of the United States about its security; and therefore if you are to take the amendment of the Senator from Maine as it reads and as it plainly means—I know he did not design it so—if you are to take it as it would be construed in a court of justice and as it will certainly be construed by these corporations, there is not a single step that these companies may take that does not run straight to the question of affecting the interests of the United States about the reimbursement of its bonds, because every dollar of the corporate money, every step of the corporate policy affecting its financial interests, and they all must affect it, are tied up and bound.

Mr. President, I should prefer that would not be so, and I submit even to my honorable friend from Maine with some confidence as a statesman of experience and as a statesman desiring just ends and just policies, that when you bear in mind the distinction which exists between a bargain made between either public or private parties, which is executed and ended, and what this bill proposes to do, which is purely an administrative bill for the future, accumulating for the companies and by the companies only their resources for the discharge of their obligations, the extent and the necessity of which and the steps for the protection of which may change from day to day and from year to year, and undoubtedly will and must under the best of administrations, is it just—I appeal to him, to his good sense and mature reflection—is it safe, either for the stockholders of the companies or their creditors or the interests of the United States, to say that Congress binds itself for twenty-two years, almost a generation of human life, to interfere in no manner so far as it affects the reimbursement of these millions of money?

Mr. BLAINE. The Senator from Vermont has asked me a question, and in answer to the criticism which he has indulged in with regard to the amendment I have offered, I will say that every particle of the evil anticipated or suggested by him as possible to flow from it would be entirely averted by putting in a proviso that the amount paid by each company per annum during these years shall not be less than a given sum. He says it may entirely change. Put in such a proviso, and that would at once displace every suggestion of danger which the Senator has made.

Mr. EDMUNDS. Yes, Mr. President, a proviso! The suggestion of a proviso is pregnant of the suggestion of the danger of any such binding and final legislation.

Mr. BLAINE. Then, if the Senator will permit me, he has brought more danger into this body than any other member of it, for he has been more fruitful of provisos in our legislation than any other Senator that ever sat on the floor.

Mr. EDMUNDS. Mr. President, I have never been fruitful of provisos which tied up the hands of the Congress of the United States from the future exercise of its sovereign power. When I do, it will be time enough for the Senator from Maine to suggest that I am fruitful of provisos. He, as I said before, is the original father—there is

no grandfather and no collateral relation—of a proposition in the legislation of this country of the Congress of the United States, since the time when the evil of the hands of States and of Congresses being tied up has been discovered in the last few years, to provide that in any respect or under any circumstances the hands of the legislative power shall be held off from the exercise of their legitimate and constitutional control over public corporations. If I was enabled to see any contingency in which an amendment of this character, a limitation of this sort, could work evil, I would not upon principle vote for a bill which should contain it, because if it be right in this instance in respect of this purely administrative affair, not a bargain between these companies and the United States, but a requirement that the sovereign will of Congress imposes as it has a right to impose upon these people to do, it is right in every case where we grant a new charter either to a bank or a railroad or an insurance company or whatever, because in the case of a new charter it is just as clear on the face of the bill what you expect the company to do, what the company is required to do, and what it engages to do. Wherefore, then, do you reserve the right to alter, amend, or repeal? Why do you not give them their twenty years of existence upon the terms stated in their original charter? There is no doubt about what it means. You have fixed it just as you intend to have it. You cannot foresee now anything that will require you to change it during the period of their existence. Why do you always put in this potent and sovereign reservation? You put it in because you know that unexpected good or evil arises, unforeseen events occur as shifting fortune changes the scene, from day to day; you know that in human affairs there may be defections and difficulties in the administration of corporations. You know that within the strict letter of the law directors and counsel may be found astute enough to change the whole spirit of it. You know that unforeseen contingencies, not provided for, may arise where the highest interest of the community, the highest interest of justice calls upon you, if you have the power, to appear and protect these rights.

Now, what might happen under this very bill, saying nothing about provisos? This stock is transferable at the offices of these companies. It is said to be now all in a very few hands. It is said that one gentleman, whom I have long known as a very amiable and estimable gentleman, a man of extraordinary genius and ability, and a man who I believe is painted a great deal blacker than he is, owns more than a majority of the stock of one of the companies. He is under no obligation to hold it; he is a private citizen although a director and president for aught I know of one of the companies; but his ownership of the stock is his private property, and he is under no obligation to us or to anybody else to hold it for five minutes when he can sell it at a price that is satisfactory to him. If the management of that corporation is left with him and with his board of directors, we might all expect that this thing would go on smoothly and swimmingly, that fidelity to these requirements would be observed, that the income of the corporation would be as great as it is now and would increase, that the same energy and economy and prudence and skill that in his hands have made the company develop large profits much more than ever before will continue to go on; but if he chooses to sell out his stock to-morrow at the stock board in New York, have you any right to complain of him? Not the least. The stock is his private property. He can retire from the corporation when he likes. Suppose it fell into the hands of foreign stockholders, if you please, of such people as

are now manipulating and fighting and seesawing over the Erie Railroad in New York—they may be good or they may be bad—but what becomes of the creditors? What becomes of the income? Receiverships and lawyers' fees and pools and oppositions and cuttings, as they call them, and other things run the income down to nothing and there is a default on the first-mortgage bonds. This act that we propose does not require them to pay the interest on the first-mortgage bonds; it leaves them just as they are in that regard. It does not forfeit the charter if they do not pay the interest on the first-mortgage bonds. Suppose they default. The stock runs down to nothing; the first-mortgage bonds run down to nothing, as they do always when there is a default. I do not mean the word "nothing" literally, but they go away down. What becomes of your second securities and your third, and your land-grant bonds, and your income bonds, and your sinking-fund bonds? They become like the third and fourth mortgage bonds of all other defaulting corporations *nil*, absolutely *nil*; and when Congress is appealed to by the constituents of my friend from New Hampshire who are said to hold sinking-fund bonds for protection, the United States is obliged to say "we have engaged to do nothing for twenty-two years; the money is still paid into the sinking fund, 25 per cent. of the net earnings if there be any, but there are not any, and that is no breach of the act; they have done just what they agreed to. They only agreed to pay in while they have net earnings, but they have so bedeviled the whole thing that there are not any net earnings; and if you will wait more than the lifetime of your grandchildren on the average, then we will appeal to Congress, and if after several sessions we can get public sentiment sufficiently waked up to it and against the press of the men who are engineering against you with plenty of money, we may be able to do something."

Are we going to throw away our power in that way, Mr. President? Have we any right to throw away our power in that way? Are we doing justice to the poorest creditor there is of these corporations? Are we doing justice to public interests? You cannot tell, sir, what will happen; you cannot tell who will manage these corporations; you cannot tell how long there will be any net income or not, depending not upon the fair progress of natural resources of development and natural competition, but depending upon the evil deviltry of stock-boards and private jobs. There is the trouble about all these corporations; and yet my honorable friend from Maine, in that sweet innocence which characterizes his character, that sublime faith that everybody is as virtuous as he is, is willing to fold up his arms and be tied up in a bag by the Union Pacific and Central Pacific Railroad Companies for twenty-two years, merely because we require them to establish a sinking fund!

Mr. BLAINE. If I understand my friend's argument—and I do not mean to interrupt him—he desires to state that as long as Mr. Jay Gould (he did not call him by name but referred to him) shall own a majority of the stock the Government of the United States may rest secure, but it might possibly pass out of his hands and then danger would come.

Mr. EDMUNDS. Mr. President, then my friend does not understand me. I did not desire to state anything of the kind. I desire now to state, as Mr. Jay Gould is referred to—my friend is fond it seems of referring to private conversations and to private men——

Mr. BLAINE. Why, the Senator referred to him. Did not the Senator refer to him, if not by name?

Mr. EDMUNDS. I have not mentioned Mr. Jay Gould at all.

Mr. BLAINE. Am I mistaken in saying that the Senator intended to refer to Mr. Jay Gould as the gentleman he spoke of?

Mr. EDMUNDS. I intended to say exactly what I did say, and I intend to respect the proprieties of this place sufficiently not to name private citizens by name unless there is a very urgent reason for it indeed.

Mr. BLAINE. Then the Senator did not refer to him at all?

Mr. EDMUNDS. I do not say what I did, except that I said exactly what I did say referring to the managers of this corporation.

Mr. BLAINE. But the Senator spoke of some gentleman holding a majority of the stock who was a very much better man than he is painted to be, and the Senate, I think, could have understood only that he referred to one gentleman, whom I am not referring to except with respect myself. I understood the Senator to say that as long as the stock or a majority of it was in his hands all would go smoothly, but the possibility of danger arose just when it might slip out of his hands and get into somebody else's. That is what I wanted to understand.

Mr. EDMUNDS. Why, Mr. President, my friend must be very much wide of the mark. Does he suppose that there is nobody else in the world than Jay Gould who is better than he is painted? There are a great many Senators that I have heard very severely denounced in connection with corporations and otherwise that I believe are a great deal better than the stories that are told about them. Therefore my description of an imaginary being or a real being as being a great deal better than he is painted does not make it necessary for my honorable friend to jump up and say that I am talking about Mr. Jay Gould at all.

Mr. BLAINE. Then, shall I understand that the Senator was not talking of him?

Mr. EDMUNDS. The Senator is entitled to understand exactly what he likes from what I say. I do not undertake to control my friend's understanding at all; he is entirely at liberty to understand anything that he wishes to understand, and I am at liberty to say anything that I wish to say within the proprieties of this place.

But, Mr. President, this jocoseness of my friend and myself about a particular person has very little to do with this question. The object I had in view was to point out to the Senate if I could what I feel very deeply myself—how dangerous it is, because a corporation happens to be prosperous at this moment and to be well managed at this moment—and I am bound to say for Jay Gould, if he has anything to do with it, (seeing that the Senator has mentioned him,) and the other gentlemen connected with the Union and with the Central Pacific roads, that they are well managed—how uncertain it is because at this present moment it happens that a corporation is well managed that you are to tie up your hands for twenty-two years and assume that it is going to be so for all time. That is the principle, that is the homily which I am trying to lay down and preach to those who are kind enough to listen. I am not undertaking to say that the present gentlemen who manage these corporations will always do it as well as they do now; but I am undertaking to say that in the course of human affairs, if they are managed well—which must be the theory of this amendment, or otherwise nobody would think of tying up our hands—the present managers may disappear honestly and properly from the scene to-morrow, and we know them no more; and into whose hands the management then goes, only those evil beings that rule our corrupt stock boards and combinations can tell. That is what I say, and

yet the confidence of my honorable friend in the future is so great that he is willing to tie our hands.

But, Mr. President, this is not all. There are other things about this amendment the honorable Senator has proposed, and which I dare say he does not intend himself, which show again how unsafe it is to jump at amendments of this character which are to tie up the sovereign power of Congress, if we have any power to tie it up, which I deny in respect of this particular application of this amendment. This amendment strikes out all the provision in the Judiciary Committee bill of this being taken as still reserving the power of amending all these acts and this act itself; it strikes that all out, leaves no authority on the face of the bill to make any further amendment, and then on the theory of the Senator from Georgia we should have no authority to amend any part of the original acts, even so much as requiring a report twice a year instead of once a year; but I am bound to say that I do not think that is the law myself, and therefore I should not make any point upon that.

Mr. HILL. The Senator will allow me. I have no recollection that I have ever said anything or intimated anything that Congress had no power to change any part of the original act. On the contrary, I have said distinctly, and endeavored to impress on the Senate why I said it, that Congress did retain the right to amend, alter, or repeal the act of incorporation and the franchises of the company, and the regulation of those franchises; but I endeavored to draw a distinction between the franchises of the company and the contract of loan. I have never said that Congress did not have authority to regulate the franchises of the company.

Mr. EDMUNDS. The contract of loan is the very thing that the gentlemen on the other side of this question are continually referring to as the thing we are trying to deal with and the thing that we have no power to change; and therefore if there is anything at all in the argument that we have no power to change an act that we do pass, and if we pass it it is binding because it refers to what they call the contract of loan——

Mr. HILL. The Senator will allow me to say that my very objection to the bill of the Judiciary Committee was that it professed to alter and amend the act, and yet every provision of the bill relates to the contract of loan, and not to the franchises of the company.

Mr. EDMUNDS. Exactly.

Mr. HILL. If you would introduce a bill to regulate or change the franchises of the company, I should concede its constitutionality; but I say that you have no right, in my judgment, to alter, amend, or change the contract of loan, especially after that contract has been perfected under the authority of Congress.

Mr. EDMUNDS. The Senator has said that three or four times, and we understood him perfectly. We understood him the other day. But I was saying that, on the Senator's theory, if we did pass this bill and did adopt this amendment which on the Senator's own theory we cannot vote for, nevertheless we were cut off entirely from any further legislation upon the subject, and I said that that was his doctrine because in referring to the act of 1871—if I am not greatly mistaken, I have it before me—the Senator did contend that the act of 1871 which commanded the Secretary of the Treasury to pay over the half transportation to the companies had foreclosed the power of Congress on the subject entirely inasmuch as there was no reservation in the act of 1871 of the power to alter, amend, or repeal.

Mr. HILL. I desire to say that, in relation to the amendment

offered by the Senator from Maine, I do not see that there is anything in my theory that prevents me from voting for that amendment. That amendment, as I understand it, simply says that Congress shall not interfere with this contract again if the companies shall perform the obligations of this bill and the previous bills relating to the contract. That is the way I understand it. Now, I say frankly that I do believe myself that is the law already; I believe that the amendment offered by the Senator from Maine is the law now. I do not think Congress has any right or power to interfere with this contract after it has been made and executed. There is something in this country, in my opinion, of higher dignity and higher value than the legislative power of Congress, and that is the right of private parties to their contracts and their private property.

In relation to the act of 1871 I was simply replying to those gentlemen who derived all the power to pass this bill from the reservation of the authority to alter, amend, or repeal contained in the acts of 1862 and 1864. They said that, in relation to this half transportation, Congress had a right to change it and require the whole transportation to be paid into the Treasury under the power of amendment. Then I said there was a subsequent act to those of 1862 and 1864, that of 1871, in which Congress had commanded that the half transportation both heretofore and hereafter accruing should be paid to the companies, and there was no reservation to alter or amend that act. Therefore the argument that we derived the power to interfere with the half transportation from the reservation to alter or amend contained in the acts of 1862 and 1864 did not apply to the act of 1871 which ordered this half transportation to be paid over without any reservation of the right to alter and amend. That was all I said.

Mr. EDMUNDS. No Mr. President, it was not all the Senator said, but it was part of what he said.

Mr. HILL. All on that subject.

Mr. EDMUNDS. It was in the same direction I admit. I am sorry to go out of my way to go back to this constitutional question, which I take it is ended in this body. If we could get a direct vote on that question of our power, I should be greatly disappointed if we did not come rather more nearly being unanimous than we have lately been upon any question. But I do wish to suggest, in response to what the Senator from Georgia has said, that his distinction between the state of this affair as a contract and the state of the franchises is a most extraordinary one and is as novel as is the amendment of the Senator from Maine in the aspects to which I have alluded. The Senator says you may control the franchises, you may do everything except interfere with the contract. Now, what is the contract? As he puts it the contract was that the United States should lend to these people a certain amount of bonds and that the bonds should be repaid, principal and interest, at the maturity of the principal, not before, leaving out now the half transportation and 5 per cent. of net earnings to be applied. That is the contract. Very well. It is also the contract that they may issue first-mortgage bonds which shall be paramount to the Government loan, of exactly the same tenor, as the statute says, and legal effect, and the same security. Therefore, according to the theory of the Senator, the first-mortgage bonds would not be payable, principal or interest, until the end of the time the principal becomes due. But that is not the point to which I wish to refer. That is aside. There is the contract providing for the first-mortgage bonds and for our mortgage. That is the contract. Now, what does this bill do? Does it undertake to say that that shall not

be the contract? Not at all. It undertakes to say that the money of this company shall not be wasted and spent with its stockholders, but shall be kept in order to fulfill that contract.

Mr. HILL. Will the Senator from Vermont allow me to interrupt him just a moment?

Mr. EDMUNDS. No, sir, I cannot. I ask my friend to wait until I finish, as I wish to finish. My friend will have his opportunity afterward.

Mr. HILL. I beg the Senator's pardon.

Mr. EDMUNDS. The Senator does not need to apologize for asking leave to interrupt me, because that is perfectly proper; but as I am not at all well and am rather fatigued, he will excuse me.

Mr. HILL. I do so. I think these interruptions are very frequent any way.

Mr. EDMUNDS. They are never disagreeable; and but for my physical weakness I should be glad to submit to the interruption now.

That is the contract which I have described. This act of sovereign power, which does not put on the form of a contract and does not ask the assent of the companies to its passage, (it will ask the assent of the President of the United States, I trust not of the companies) merely says to these companies, "You shall not take the product of your franchise, the very thing which your franchise alone entitles you to have, income, and bury it out of the reach of your creditors and thereby defraud them of their rights, those creditors being the United States, and the first-mortgage bondholders, and the land-grant bondholders, and the sinking-fund bondholders, and the holders of the floating debt, and everybody else. It provides not that the United States shall take this money out of hand, but it provides that the money shall stand as a security for whoever in the courts of equity and justice is entitled to the preference of taking it of the shareholder. That is all that the bill does, and you tell us that that is a violation of a contract, by which we have agreed to take our money twenty-two years hence when we in the exercise of our sovereign power say what the companies themselves say. Both of them have said that "the time has come when it is apparent that it is totally impossible to pay this debt if we go on spending the money on our stockholders." We say then "You shall do it," and that is a violation of the contract! Mr. President, that confounds all distinctions that I understand anything about. I can only state such a proposition to make the best answer to it I am capable of.

Now I will come back to the amendment of the Senator from Maine and I shall close. The amendment of the Senator from Maine, as I was proceeding to say, besides these intrinsic and unchangeable objections that I have stated to it, that go to the very basis of the whole thing and that no sort of modification could get over, to my mind, has also this effect, or is in great danger of having the effect, to cut off the suit of the United States for the net earnings already due. You will understand that we have not yet had a cent of net earnings paid into the Treasury under the act of 1862, although these roads have now been completed from eight to ten years. Not a penny of this enormous sum of net earnings has been paid into the Treasury, although dividends in large percentages have been made to stockholders. It is true, the companies say, that since the act of Congress stopped the Treasury from paying out the one-half of the transportation account, they being entitled to that, it will accumulate enough to pay the percentage of net earnings when it is found out what is enough to pay them; but they have not paid in a cent yet

and they are entitled to this half transportation. The effect of the amendment of the Senator from Maine is, to my mind, and it will be pressed immediately when you come to the court, that as we have tied up our hands in respect of everything relating to these roads on account of the bonds advanced and of the sinking funds to be established, these bonds and these sinking funds shall be taken as sufficient. This provision, as I am saying, makes an end, if they comply with the acts of 1862 and 1864, on account of advances to the United States, that these bonds and these sinking funds shall be taken as sufficient to meet the obligations of the companies on account of such bonds prior to the maturity thereof, a complete wind-up.

This amendment in an ordinary act, which did not take the pains to review the past just where it is, to meet objections, would be, so far as I am now speaking of, not objectionable; but the act proposed by the Judiciary Committee leaves the matter of net earnings in the past entirely behind and only provides for net earnings in the future, what they are defined to be, and requiring them to be paid in. The consequence would be, as would be contended, that in connection with that section of the bill of the committee this provision relieves the companies from the duty of paying any part of the old net earnings, because they have complied with the acts of 1862 and 1864 in connection with this proposed act as to the particulars mentioned.

But there is another thing that is still more doubtful about this amendment and which also is far away from the fundamental objections that I have stated. You are aware, sir, that under the act of 1873 the Attorney-General, in pursuance of the resolution introduced by the Senator from California [Mr. SARGENT] being carried into an act of Congress, was directed to institute suit against the Union Pacific Railroad Company, and the Credit Mobilier, and so on, for the purpose of ascertaining the true cost of the construction of that road, which by the acts of 1862 and 1864 was to be the basis upon which bonds were to be issued as a first mortgage, and upon which tolls were to be taken and interest paid and all the regulations were to rest;—the cost of the road, the real true actual cost, not the amount of stock on which it might make dividends, but the cost, and also to bring back into the coffers of that company, for the benefit of its real stockholders and the benefit of its creditors all around, any moneys that had been unlawfully taken from it and to require to be paid into the coffers of the company any unpaid stock, because the act which created that company required payments by installments to be made in cash for the full amount of the stock until the capital should all be paid up, it being generally understood that the stock never was paid for in the Union Pacific Railroad Company, and that the Credit Mobilier business, made up of the directors, &c., had, as they say out West, "scooped the whole concern." What is the ground upon which the United States has intervened under these acts of Congress through the Attorney-General and is now prosecuting suits against this company to rectify this enormous fraud, as is charged, and which the Senator from California thinks has been condoned. Notwithstanding his own earnest efforts to prevent condonation, and notwithstanding Congress, in compliance with his resolution, has passed the necessary act to prevent a condonation; it is still condoned, he thinks.

Mr. SARGENT. Will the Senator allow me?

Mr. EDMUNDS. Mr. President, as our right of intervention is made to depend upon our interest in the fund as the holder of this second mortgage, what becomes of us as to that? What new complication

will arise in those suits I should be glad to know, what new defenses will be interposed; but here is a real condonation. That is the spirit of the Blaine amendment, so called, which will be as famous in the future annals of railway and other corporate legislation as the Wilmot proviso, although made to rather a different end. What effect will that amendment have upon it, they will ask. "Why, this is a condonation. You have agreed that you will do nothing for twenty-two years to come in respect of any of this bond business but you try to interpose about the Credit Mobilier and everything after this money is tied up and is nothing to you; if any stockholders want to sue us, let them do it, if they can get an act to authorize them to do so." I do not say that in point of law it will necessarily have that effect although I greatly fear it. I only say it will furnish a rich field for the ingenuity of the very able and ingenious counsel that these companies employ in such numbers to put off to an indefinite date any vindication of the rights of the United States and the other creditors. So much for that.

Mr. President, in view of all this, when you look at the essential character of this legislation, which is sovereign and not a compact, which contains no bargain at all, which does not deal with the past but only deals with the future in a mere administrative way, I ask is it safe and wise for the Congress of the United States to put into this bill a provision that nothing more shall be done for twenty-two years? It does not appear so to me.

The honorable Senator from Ohio, [Mr. MATTHEWS,] and the honorable Senator from New York [Mr. CONKLING] to a certain extent, have urged upon us that we are invading the province of the Supreme Court, that the court has decided what the rights of these companies are, and therefore we cannot amend their charter. What is the force of that argument? Do the Senators mean to say that you cannot exercise your power to alter, amend, and repeal at all after you found out exactly what the clause means that you want to amend and repeal? That is what the court has done. The court has told us what the law means now, and the Senators say "inasmuch as you have now found out that this law does not mean what you think it ought to mean, your power to change it has gone, because the court has told you what it does mean and therefore anything that was so plain that you did not want the court to tell you what it means, you never can alter and amend." Mr. President, that would do for a justice's court, but it is hardly up, I think, to the status of the Senate of the United States. I may be mistaken. I speak with the utmost diffidence upon that point.

Then my honorable friends have urged upon Senators, and it perhaps has had some effect, the communism of this legislation, that we are assailing corporations; that the communism of this bill in assailing corporations is only furnishing powder and ball for the commune. The honorable Senator from Ohio [Mr. MATTHEWS] laid great stress upon that and warned you all, until perhaps your hair stood up as if you had seen a ghost, that you were embracing the commune by undertaking to interfere by the sovereign right of the people with these great monopolies; and the Senator from New York urged that they must have the same justice and the same fair play that the poor dweller in a hut by some river side who sweats for his daily fishing should have. Mr. President, that last is true. So they should. When the dweller in the hut of the Senator from New York comes to control two thousand miles of railway and all the station agents and the millions of income that arise from it, and

comes to appropriate that money to his own use when his duty is to appropriate it to the payment of his debts, then I take it that he will be in the attitude of these corporations, and Congress would visit the same justice upon him. The idea that you cannot touch a corporation because it is entitled to the same justice as anybody else is also somewhat muddled, for the same reason that it is entitled to the same justice as other people, although much more difficult to apply it, because private persons cannot exercise the power that corporations do, they have not the money and the agents to repress legislation; but when the same cases occur corporations and individuals stand upon the same grounds, undoubtedly. When, as I have said, an individual comes into this presence in such an attitude as these corporations occupy, I am sure that we shall have the aid of the Senator from New York in administering fair and equal justice to him.

But what is this commune, Mr. President, that we are guilty of promoting? Where is it in this bill? My honorable friend from Ohio [Mr. MATTHEWS] says this is a grand step toward communism because the representatives of the people interfere to redress their grievances from the overwhelming power and the really moral breach of the present obligations of these companies. Is that communism? I had the impression that the well-regulated administration of law in the interest of justice and equal rights, in the interest of the small stockholders of these corporations, if there be any, in the interest of the unsecured creditors of these corporations, as there are many, was a step far from communism. Every step that we take in legislation in protecting the interests of the people goes toward communism. Every step in getting away from arbitrary power is a step toward communism in exactly the same sense and no other than you, sir, [Mr. OGLESBY in the chair,] building a fire in your small cook-stove on the prairies of Illinois to cook your dinner is a step toward incendiarism. You have taken the first step and where are you going to end? If you have the temerity to boil your beef and potatoes and heat your toddy at night after you have plowed all day on the prairie you are an enemy to the community; you are going to communism; you will be an incendiary and have everything in common to-morrow and burn everything up! That is the danger my friend from Ohio feels about this bill. We are really going to interfere with the private right of these corporations to defraud creditors, and say they shall not do it, and we are to be charged as lending aid to that unhappy sentiment which is to be deprecated in western regions as well as in the eastern, and I hope the returning good sense of free and intelligent society will always secure society against evils of that kind.

Mr. President, I believe I have said what little I had to say, very desultorily; but I only want to say one thing more about this matter. I shall feel bound for one, with a complete sense of the responsibility of it, and I ask everybody who has the same purpose in view that I have, and feels it with the same intensity, to vote against this amendment of my friend from Maine; and if the Senate should please to adopt it, to vote against the bill itself, because I would much rather that the Congress of the United States, the representative of public justice and of public right, should wait for a year or two until "returning Justice lifts aloft her scale," than that we should commit ourselves to a piece of legislation that would be almost certain in the future to be fatal in respect of the very objects that the bill wishes to accomplish, besides being destructive of the sound principles upon which all such legislation at present rests.

Mr. VOORHEES obtained the floor.

Mr. BLAINE. Will the Senator from Indiana give me two minutes of his time? I wish to modify my amendment.

Mr. VOORHEES. With pleasure.

Mr. BLAINE. I desire to say that every solitary objection which the Senator from Vermont has made against the amendment which I submitted can be cured, and is fully answered, by adding to the end of it a simple proviso which he could write much more quickly than I, but which makes the amendment that I offered a much more conclusive measure than the bill itself as described by the Senator from Ohio who reported it, [Mr. THURMAN.] I have the right to modify my amendment, and all the imaginary bugaboos which the Senator from Vermont has constructed out of his fertile imagination in regard to the road all going to pieces, and the first-mortgage bonds coming into default, and the interest not being paid, and there being nothing but the stock board in its corruption proceeding from it, I propose to cut up by the roots. I also propose to remove utterly that still less well-based imagination that this amendment which I have offered in any wise interferes with any claim now existing of the United States. I venture to say that it takes what I heard Rufus Choate once describe as a double-forty-horse microscopic power of sight, possessed only by the Senator from Vermont, to discover any such waiver in that amendment. If I did not have such great respect for his legal ability, from which I am always glad to receive instruction, I should call it an absurdity, but I cut both those objections and all his objections up by the roots by adding at the end of my amendment the following proviso:

*Provided*, That the annual payment from each company, in addition to the half-transportation account and the 5 per cent. of net earnings presently applicable to the interest on the bonds, shall never be less than $600,000 for the sinking fund; and that nothing in this act shall be construed to waive any claim of the United States against either of said railroad companies from whatever source arising.

I am obliged to the Senator from Indiana for yielding me the opportunity to modify my amendment.

Mr. VOORHEES. Mr. President, I do not propose at this late hour, in this protracted debate, to enter upon a general discussion of the subject before the Senate. In fact, until within the last few days it has been impossible for me to give it that close attention which its importance deserves. It has been my earnest desire to support the bill reported by the Judiciary Committee. It is conceded on all hands that some measure of adjustment between the Government and the Pacific Railroad Companies should be adopted by Congress, and that it should be one, which, while securing to the Government all its pecuniary interests, would at the same time preserve all the contract rights which have accrued to the companies.

I desire, however, more especially, for the few minutes which I shall engage the attention of the Senate, to speak of the amendment offered by the Senator from Maine, [Mr. BLAINE.]

If the bill reported by the Judiciary Committee is what its friends claim it to be—a fair solution of the conflicting interests of the Government and the companies, and a guarantee to the Government of all that is due from the companies—then it plainly seems to me that it should be made a final and permanent act of legislation. The amendment offered by the Senator from Maine reads as follows:

But so long as said Central Pacific and Union Pacific Railroad Companies shall faithfully comply with the provisions of the said acts of 1862 and 1864, and of this act relating to payments to the United States on account of the bonds advanced,

and of the sinking-funds to be established as aforesaid, such compliance shall be deemed and taken as sufficient to meet the obligations of said companies on account of such bonds prior to the maturity thereof.

This is a declaration on our part that so long as the companies faithfully comply with what we now demand we will make no new demand upon them. It is a declaration that we have faith in the sufficiency of the pending bill to secure to the Government all its rights and dues in the premises. We have been repeatedly assured, in the most earnest and positive manner, during the last four weeks, by the friends of the bill, that it would accomplish this great object. We have been strenuously urged to support it on that ground. If it has this merit and is worthy of our support it is solely because it will accomplish this result.

Mr. THURMAN. May I interrupt the Senator one moment?

Mr. VOORHEES. Yes, sir.

Mr. THURMAN. What friend of this bill has said that it would accomplish the payment of the debt according to the terms of the contract?

Mr. VOORHEES. Does the Senator from Ohio say that it will not accomplish that result?

Mr. THURMAN. I have always said so. It will not do it by within $35,000,000. Perhaps more than that will remain due.

Mr. VOORHEES. Why, then, does not the Senator perfect a bill that will protect the Government in its rights?

Mr. THURMAN. Because I cannot pass it through this Senate.

Mr. VOORHEES. Ah!

Mr. THURMAN. If I cannot pass this measure how could I?

Mr. VOORHEES. The Senator should try before making such an assertion.

Mr. BLAINE. May I ask the Senator from Ohio a question with the leave of the Senator from Indiana?

Mr. VOORHEES. Yes, sir.

Mr. BLAINE. Does the Senator from Ohio doubt, and will he state he doubts, that the two railroads are not abundant security for that remaining $35,000,000?

Mr. THURMAN. I do say that they are not, with their first-mortgage bonds on them, security, and they have said so themselves again and again.

Mr. BLAINE. I beg the Senator's pardon, with all due respect; they never said so at all. The Senator is utterly mistaken. They said that unless provision was made and the $150,000,000 of sinking fund went on they could never pay it; but the Senator has a bill that provides for a sinking fund, and by the sinking fund he pays off $120,000,000 of mortgage, which leaves only $30,000,000, and he cannot, without disputing the arithmetic or the rule of three, doubt or deny that the security is more ample than the United States holds for any other obligation in the whole of its ownership.

Mr. VOORHEES. Sir, I was amazed on yesterday to hear the very able and very distinguished Senator from Ohio [Mr. THURMAN] exclaim that the adoption of the amendment under consideration would kill the pending bill. Can it be that an amendment declaring that a bill, when enacted into a law, should thereby become a permanent piece of legislation, destroys that bill? Can it be that an amendment which gives perpetual life to an act of Congress is, as the Senator from Ohio exclaimed, prussic acid to its existence?

This amendment says that the measure reported by the Judiciary Committee, if it shall become a law, shall live and be perpetual as

long as the Pacific Railroad Companies faithfully perform their duties under it. And yet the honorable Senator from Ohio [Mr. THURMAN] asserts that such an amendment will destroy the life of the bill! The amendment proposes to accept the bill, and to require the Pacific Railroad companies to accept it also, and that when it is thus accepted, and as long as it shall be faithfully complied with, it shall not be disturbed. It proposes that this whole subject shall be taken out of Congress; that a final settlement shall be made, and adhered to.

A few years ago it was the earnest purpose of leading members of this body, I believe, including the Senator from Ohio, that a finality upon this subject should be obtained. It was then thought that a judicial finality was the most desirable. The question as to the time when the Pacific Railroad Companies, under existing laws, were liable for the payment of their debts to the Government, was submitted to the Supreme Court of the United States. It was there decided adversely to the views entertained by many and adversely to my own views and wishes. There is no higher resort, however, than the Supreme Court of the United States to find out what the law is. The subject, however, has been reopened here, and, under a claim of power, on the part of Congress, far-reaching and to my mind questionable, it is now proposed to alter and amend the laws upon which the Supreme Court made its decision, and under which that court determined the time when the obligations of the companies became due. I have had from the first the gravest possible doubts of the existence of this power on the part of Congress, under the Constitution. I am not now about to enter upon the discussion or examination of the decisions of courts upon this point; that has been fully done by others, and as far as in my power I have enlightened my mind by their labors. But it is not in my nature nor has it been a part of my political education to take kindly to the great and unlimited stretches of power which Congress has so frequently put forth in the later years of our history.

During the last seventeen years I have heard this power invoked and seen it exercised to the destruction of every class of reserved and vested rights belonging not merely to corporations, but to great political commonwealths—to States that are sovereign in the control of all matters not expressly granted to the Federal Government. I have seen it rend States asunder; tear down States; reconstruct States; abolish State Legislatures; annul the legislative acts of States; unseat members of State legislative bodies, and seat others in their places. I have seen this unbridled power of Congress roam through the reserved rights of political communities like a wild boar ravaging fruitful vineyards. I have witnessed it act as the obedient servant of fanaticism; of wilful, violent, unlawful desire to inflict injury, to strip people of their individual franchises, to destroy their property, and lay waste their homes.

It has run a career of iniquity and crime in this country which no crowned head upon the earth would dare attempt, or would remain crowned for a single day if the attempt were made. It obeyed the call of an enraged and baffled party in this Capitol, when the constitutional acts of a President were sought to be enacted into a crime by which to hurl him from his high office by impeachment. When, therefore, sir, I read the report which accompanies the bill from the Judiciary Committee, and found it there asserted that while the Federal Constitution prohibited States from violating the obligations of contracts, such a prohibition did not extend to the Federal Government itself, I instinctively recoiled from this new, and, to my mind, monstrous assertion of power upon the part of Congress.

I am willing, however, indeed desirous, to go as far as possible—to the very verge of my conscience, as a sworn legislator—sworn to uphold the Constitution according to my own convictions—with the Judiciary Committee. Where I have doubts I have aimed to give the Government the benefit of them. Where my mind has wavered in regard to conclusions, I have striven to follow those arrived at by the distinguished gentlemen who compose that committee. As lawyers, their ability and industry and integrity are all most cheerfully conceded. Their infallibility, however, is not conceded. I believe their bill should be amended. I believe that the amendment of the Senator from Maine [Mr. BLAINE] ought to be adopted.

If we are to admit that Congress has the power to adopt this bill, in my judgment we should say that this power shall not again be exercised as long as the companies gave no occasion for it by their failure to comply with the law.

This subject ought to be removed from Congress; it ought not to be a theme of perpetual agitation in these halls. The great interests at stake should not be made the playthings of stock speculators, brokers, and gamblers. Nor should they be left open for every adventurous, aspiring, restless member of either branch of Congress, to inaugurate a new agitation whenever his interests or his ambition might dictate. The scenes of the last four weeks in and about this Capitol should never be enacted again, if it is possible to avoid them. If the bill reported from the Judiciary Committee is not a sufficient one to protect the Government; if it is not sufficiently guarded; if it is so imperfect that it will be unsafe to declare it a finality, then let the Judiciary Committee do its work over again. It has the ability and experience to accomplish what we all so much desire. If that committee is not satisfied now to make this work of its hands permanent, let it try again; but let us have an end, let us have rest and quiet and repose on this subject.

It is true, of course, that one Congress cannot bind future Congresses, and the amendment of the Senator from Maine, [Mr. BLAINE,] if adopted, may be disregarded hereafter. But the question is less likely to be reopened after such a legislative declaration as this amendment makes than it would be if it were not made. The declaration contained in this amendment will have the effect to prevent litigation and to encourage the companies to fulfill the law in the belief and hope that while they do so no future Congress will be so regardless of good faith and of the public interests as to disturb the present adjustment. I have therefore, after the most serious and, in some respects, painful consideration of this subject, determined, for myself, that it is my duty to vote for the pending amendment. No question of public policy ever appeared to me in a clearer or more commanding light. The advantages to flow from its adoption are very great and very obvious to the commonest understanding; while the evils which, in my judgment, will follow its rejection are equally plain and beyond the reach of estimate.

Mr. HOWE. Mr. President, I am not about to inflict upon the Senate a speech, but I shall not be able to vote for the bill reported by the Judiciary Committee, of which I happen to be a member. That my reasons for withholding my vote from that bill are so radically unlike the reasons which others have assigned for their opposition to it, is the only excuse that I have for obtruding a remark into this debate. Whether these railroad companies are, as some have contended, great benefactors of the human race or common marauders, may be an interesting question, but it is not one that I shall discuss.

Whether they are combinations of thieves or communities of saints might be very pleasant to know, but it seems to me the most interesting fact about these companies is one that nobody can dispute, and that is that they are debtors to the United States in very large sums, and whether they are honest or dishonest, the United States are alike interested in securing the repayment of that money. I say they are indebted to the United States in very large sums. Speaking only of millions, and referring only to a single company, that which is nearest to us, the Union Pacific, the principal of its debt is $27,000,000. The interest on that debt when it shall mature will be $49,000,000. Some portion of that interest will have been paid; no one has told and no one can tell precisely what portion of it. The probability is that it will be somewhere from $25,000,000 to $30,000,000 of the interest. That is only one of the companies. The other will owe quite as much. A hundred millions is probably not an overestimate of the amount the two companies will owe the United States in about twenty-two years from this time.

I say that is the interesting fact in this case. How are we to secure the repayment of that interest, the collection of these debts? It seems to me, in spite of what others have said, that if that money is ever to be paid at all, it must be paid out of the annual net earnings of the companies, that the property mortgaged to us will never secure the repayment of those sums. The Union Pacific Company, which will in twenty-two years owe the United States not less than $50,000,000, I do not hesitate to say could be built now for $18,000,000. How does any one hope to realize from a mortgage on eighteen million dollars' worth of property a debt of $50,000,000, when prior to that mortgage there is another one to be paid of $27,000,000? It seems to me that that is a hopeless indebtedness; but nevertheless, though the cost or the intrinsic value of the property mortgaged is so very low, it happens that the annual net earnings of the company are abundant to pay not only the United States, but all the debts the company has yet contracted, enormous as those debts are.

Mr. President, the Judiciary Committee have furnished us with a table showing the net earnings of these companies for each year during the last four years. The Union Pacific Company had net receipts in 1874 amounting to a little more than $5,000,000; in 1875 to something more than $6,000,000; in 1876 to something more than $6,500,000; in 1877 amounting to $8,317,091.58. The Judiciary Committee have concluded from that table that since the average earnings for the past four years were over $6,500,000, we can rely upon the average earnings being hereafter fully $6,500,000. Is that a correct or a probable estimate? If you weigh a boy one year and find that he weighs forty pounds, and the next year at the same date you find that he weighs fifty, and the next year sixty, and the next year seventy, it would show that the average weight for the four years was fifty-five pounds, but it would be a very crude inference to conclude from that that his average weight the next four years would be fifty-five pounds. These Pacific companies are infants; they are lusty but they are growing; they traverse empty empires; it is their office to fill those empires and then to carry for them. They have not yet begun to exhibit what they are capable of doing, what they are capable of earning; but if we were compelled to conclude that they had already attained to the maximum of their earnings, there was last year, as I have already stated, $8,300,000 of net earnings at the disposition of the Union Pacific Company. That is a very large revenue. Many sovereign governments expend less than that in a year. Out of that revenue the Union

Pacific Company can discharge all the interest due to all its creditors and still have a very large surplus in its treasury. The Government directors speaking of that company make the declaration that out of that balance a million can be taken for the 5 per cent. and for the half of the charges against the Government for transportation; all the interest due to all its creditors can be paid and 6 per cent. dividend can be declared on $36,000,000 of stock, and still the company would have $1,562,853.58 to spare.

If that company never grows an inch, but maintains the rate of earnings hereafter which it realized the last year, out of those earnings it is amply able to make provision for every debt it owes, whether to the Government of the United States or to anybody else. Now, ought the company to pay its debt? I find no one to dispute that. If it means to pay that debt, why should it not appropriate this surplus of annual earnings to the payment of it, instead of distributing it among its stockholders whom it does not owe? It is the fair thing for any man who owes money to hand his estate over to his creditors rather than to his children, whom he does not owe. It is the fair thing for the company to provide for its debts before it provides for its stockholders, and it is the interest of the company to make that disposition of its net earnings if it means to pay the debt. It is not a just thing to the stockholders to have the assets of the company squandered to the prejudice of the stock, or rather to endanger the stock. Why, then, should not provision be made to meet the whole debt of the companies out of their annual earnings? I have heard it said that they must pay some dividends to their stockholders. Why so? If the stock is earning money, is not that all that the stockholders can ask? If knowing the stock earns money, is it not just as much for the advantage of the stockholder that it should go to the surplus fund as that it should be divided among the stockholders? The Senator from Maine [Mr. BLAINE] who sits near me insists that the property of the company is abundant security for the debts of the company, if I understand him.

Mr. BLAINE. For what remains of the indebtedness.

Mr. HOWE. For what will remain of the debt; that it will be adequate security for the $50,000,000 which will be due the United States and for the $27,000,000 (I am speaking now of the Union Pacific Company) which will be due on the first mortgage.

Mr. BLAINE. Only $20,000,000 will be due the United States, twenty millions by each company, forty on both, forty-seven millions in all on the Union Pacific.

Mr. HOWE. Then it would be $47,000,000 due to the United States and twenty-seven millions due on the first mortgage. Then a road which can be built for eighteen million is considered good security for a debt of $74,000,000!

Mr. BLAINE. How do you make seventy-four millions?

Mr. HOWE. Twenty-seven and forty-seven make seventy-four.

Mr. BLAINE. Oh, no; twenty-seven and twenty make forty-seven. It is only forty-seven million.

Mr. HOWE. Only twenty millions will remain due to the United States, the Senator means. I have not made these figures myself.

Mr. BLAINE. I took the figures from the Senator from Ohio; I have not made them myself.

Mr. HOWE. The conclusion of the Senator from Maine is that only twenty millions will be due to the United States, principal and interest, of this loan. Is that the co nclusion of the Senator?

Mr. BLAINE. Yes, sir.

Mr. HOWE. It makes a very material difference and only leads us to this result, that instead of $67,000,000 there will be $47,000,000 due. The conclusion of the Senator is therefore that the road will be good security for $47,000,000, though it might not be good security for $67,000,000; and yet I cannot understand how a piece of property which can be duplicated for $18,000,000 can likely be good security for $47,000,000. Understand, the Senator will tell me that it is paying interest. He says it is paying 7 per cent. on $90,000,000. I admit that and it actually paid last year over 8 per cent. on $100,000,000, of net profit, and I firmly believe that if nursed, taken care of, not trampled upon, in five years from this time it can pay 12 per cent. on $100,000,000. But the Senator would not loan money at that rate and on that security, simply because this company cannot be secured forever in the exclusive carrying of the immense tract of country for which it is doing business to-day. I will not say it is unconstitutional, that it is a violation of the Constitution of the United States, but it is a violation of the constitution of American society, to permit anybody for a series of years to reap such enormous profits out of so small an outlay of money.

Therefore I think the Senator will conclude himself, or at least if he does not conclude himself that this is inadequate security, I hope he will be able to convince me that it is adequate; for all I ask for the United States is that we shall take such measures as will secure the repayment of that money. The question of time is with me quite unimportant; but if I were the company, I know I would not distribute these net earnings among the stockholders. It seems to me, I know I would say to the United States, "Let me invest this in the debt I owe you;" and if I were in the place of the United States I would say to the company, "Yes, we are glad to have that investment made in this debt, because we consider this debt insecure, and we will pay you a more liberal interest for that investment than you can realize on your net earnings, let you invest them anywhere else you can." If it be conceded that the company means to pay these debts and that the United States means to ask no more than the payment of these debts, then I cannot for my life see why the interest of the companies and the interest of the United States are not identical. We want not to crush the companies but to encourage them, because they are our debtors, and they want to exhibit their good faith and their determination to meet what their real obligations are, because we are their creditors.

I do not therefore object, Mr. President, to this bill because it asserts a power over the companies which I am prepared to deny. I neither deny nor assert that power. I do not think it the proper time to raise that issue. When we have said distinctly to the companies, "all that we want is that you shall secure us in the repayment of what you owe," and when they shall say "we will not secure you to that extent," then it seems to me it will be time for us to see what are the reserved powers of the Government over these charters. But I would make an honest endeavor and a serious endeavor, as it seems to me, to see whether there could not be an agreement between the companies and the Government before I fell back on that power, and if driven to the assertion of the power at last, it seems to me I would not exert it to enforce the payment of a part of what is due, but I would enforce it to assert the ultimate and full rights of the United States.

The PRESIDING OFFICER, (Mr. OGLESBY in the chair.) The question is on the amendment offered by the Senator from Maine, [Mr. BLAINE.] On this question the yeas and nays have been ordered.

Mr. THURMAN. Mr. President, I have a few words to say on this amendment, but if there are other Senators who wish to speak now I will cheerfully yield the floor. I want to get a vote on this bill to-day if it is the pleasure of the Senate to take the vote, as I hope it will be. I am willing to forego anything like a set speech in the conclusion of the debate, but I shall claim the right to be heard before the vote is taken. I consider the amendment as really determining the fate of the bill. If there is any Senator now who would prefer to speak further, I cheerfully give up the floor.

Mr. EATON. Mr. President, every Senator unquestionably feels the importance of the bill now before the Senate. In fact there are two bills before the Senate, a bill from the Judiciary Committee and a bill from the Railroad Committee. Under my obligations as a Senator I cannot vote for either of those bills as they now are. The bill introduced by the Judiciary Committee, in my judgment, asserts power that does not belong to the legislative department of this Government. God forbid, sir, that I shall ever subscribe to the doctrine of the omnipotency of Congress, and, with a very high regard for the Judiciary Committee, I do not believe in their omniscience. A bill is brought here and we are told, absolutely told, in words told that the wisdom of man is exhausted; this bill is to be taken with no t's crossed, no i's dotted; the Judiciary Committee is potent enough to require its passage just as it is.

Mr. President, in my judgment this bill is in violation of the Constitution of the United States. There has been a wheelbarrow-load of decisions of courts brought here and not one that sustains the claim of the Judiciary Committee. I do not propose to consume much of the time of the Senate, and therefore I will lay down what I regard as the law as decided by one of the highest courts in the United States, as decided by one of the purest courts in the United States.

In the first place, let me premise by saying that all the power possessed by Congress is by grant, and that grant is to be found in the Constitution of the United States. There is no other power possessed by Congress; and what is that power? It is intimated, more than intimated, that because the States of this Union are inhibited from passing a law impairing the obligation of contracts, Congress can do that same violation of common sense and common justice. I have not heard my distinguished friend the Senator from Ohio [Mr. THURMAN] claim that power, for he says he is a strict-construction, hard-headed democrat; I think I use his own language.

Now, then, can Congress pass a law impairing the obligation of a contract? They seek to do it. The bill of the Judiciary Committee seeks to impair the obligation of a contract, as I will try to show before I get through. First, then, what is a contract? That is the first point in the legal propositions to which I direct the attention of the Senate. "A contract within the Constitution of the United States is one relating to property or some object of value"—mark the language—"which imposes an obligation capable in legal contemplation of being impaired." That is a contract, relating to some object of value which imposes an obligation capable in legal contemplation of being impaired. Now, I assume that there is an executed agreement between the Government of the United States and these two railroad companies. I assume that that agreement is executed. I assume that there are objects of value connected with that contract.

Let me see whether I am right or not. If I am not right, I shall vote for the bill. If any Senator will disprove these propositions of law,

I shall vote for the bill. No man has yet disproved them. Now, let us see what this agreement was. The United States said this—of course I have not the charter in my hands—the United States said to these Pacific Railroad Companies, "If you will transport the munitions of war of the United States, taking half our transportation as payment presently, build this road, keep it in absolute repair, with all its material in order, then we will loan you so much money, to be paid on a given, certain day, we in the mean time taking 5 per cent. of your net earnings and half the cost of the transportation you do for us."

There is an obligation of value: first a service to be performed by these companies, next a sum of money to be paid annually or semi-annually for these companies. There is your contract executed. Have I not stated it correctly? If I have not I should like to be corrected, because I have said that if these legal propositions fail me I shall vote for the bill.

One other legal point I direct the attention of the Judiciary Committee to. "A legislative enactment equivalent to a contract or agreement, which is perfected, requiring nothing further to be done in order to its entire completion, is a contract executed, and whatever rights are thereby created subsequent legislation cannot impair." I desire an answer to that legal proposition.

This is the argument of the supreme court of Connecticut when giants occupied her bench. No greater or purer men than Williams and Johnson and Huntington and Storrs ever sat on a bench anywhere. I commend this law, for it runs on all fours with my claim.

One other proposition. "A legislative act in the nature of an executory contract, which is supported by valuable and sufficient consideration, creates an obligation which a subsequent legislature cannot impair."

These three propositions I submit to the Senate as the positions upon which I stand, and as an honorable man, as a man standing by the constituted rights of the people and of the corporations created by the Government, I cannot avoid these positions. "Ah," but says the Judiciary Committee, "do you deny the right to do" what? To repeal? It is in the charter. To amend? It is in the charter. "Do you deny it?" Certainly not. Whenever a corporation, the creature of a legislative body, violates the agreement which it has made with its creator, then the creator will take from it the power which he has given it, and never under any other circumstances. It never has been done in the United States and never will be done.

Mr. THURMAN. What is the use of the reservation?

Mr. EATON. I am glad my friend has interrupted me without rising. The use of the reservation is simple and easy: first, the right to amend, the right to alter, the right to repeal. The right to amend is absolutely necessary for the well-being of the corporation itself. The right to alter is necessary to the well-being and the proper carrying on of the corporation itself. Everybody knows it; everybody that has served, as I have, in the Legislature of a Commonwealth that is certainly as nearly a corporation-ridden as any Commonwealth ought to be, knows that without that power to amend not infrequently corporations themselves would be stopped. Let me ask my friend who just interrupted me, does he claim that without any fault on the part of one of these railroad companies, or any other corporation chartered by Congress, Congress possesses the absolute power to repeal the charter in despite of its vested rights? I ask if he claims any such right?

Mr. THURMAN. I do not know what the Senator means by "vested rights."

Mr. EATON. Suppose you let me tell, or guess, either.

Mr. THURMAN. I can say this, that Congress has the right to take away every franchise of that corporation at its pleasure.

Mr. EATON. I do not believe that. I do not believe that is the meaning of the right to alter, amend, and repeal. It would destroy any government on the footstool of the Almighty that undertook to exercise a right as violent to common sense and common justice as that. It is put there to alter when it becomes necessary either to the well-being of the public or for the necessities of the corporation. It is put there to amend when it is necessary to amend either for the well-being of the public or for the weal of the corporation, to secure the purposes of the grant as the Senator from Georgia [Mr. HILL] suggests. It is put there to repeal and take away the charter when that corporation violates itself the contract it entered into. It means nothing else, and there is not a one-horse court in the United States anywhere that has ever taken any other view. You of the Judiciary Committee have brought here a wheelbarrow-load of decisions that do not come within a thousand miles of touching the question.

I should be very glad to have somebody answer the legal propositions which I have had the honor to submit, and in submitting them I have stated that they come from a court renowned among the high courts of this country.

Sir, a great deal has been said here that I have been sorry to hear. Intimations have been made here—Senators have not dared to say on this floor that these roads were bribing Senators; that they did not dare to say—but they have thrown out intimations so that the public press have said that there has been something in that nature. Intimations have been made that the lobby has come here and chased men to their private doors and houses and libraries. Sir, I have not been troubled with any lobbyists. There are but two gentlemen who are connected with this railroad that have ever spoken to me and that but once apiece. It has been more than intimated—for the language has been used here—that those who ventured to differ from the Judiciary Committee in regard to this bill were the friends of the roads. What does that mean? I ask what it means? Is there anybody here who is an enemy of these roads? Is my friend from Kentucky, [Mr. MCCREERY?] I trow not. Is my friend from Ohio, [Mr. THURMAN?] I trow not. Am I more a friend of the roads because I cannot see the constitutionality of the bill which was born of the Judiciary Committee than any other man ought to be? Sir, I stand by my own convictions always, here and everywhere else. Here is a bill that in my judgment destroys the constitutional rights of a corporation, the rights given it, and rights which by law cannot be taken from it except by its own default. Believing that as I do, am I to be called a friend of the roads as against my country?

Mr. President, figures have been submitted here—I do not know by what computation of interest payable semi-annually—showing that there will be $200,000,000 due, more or less, by the time this loan becomes due, and the roads cannot pay it, and therefore we are to violate the contract and make them begin to pay it now! Good law! Sound morals! Now let me make a few figures. I beg to say in advance that it is a sorry business for me to make figures of this character. It is said—my friend from California [Mr. SARGENT] can tell me if I am correct—that the United States by the chartering of these companies has saved from two and a half to four million

dollars annually since the roads have been in operation. Now, a little figuring. Suppose it should be from two and a half to four millions annually from now till the year 1900, at 6 per cent. interest, computed semi-annually, this would be more than $500,000,000. When you make figures one way, take them the other way. The arithmetic I care nothing about, but it is simply as sound upon the one side as it is upon the other. If the Government, to illustrate, saved $4,000,000 last year by means of this railroad, then if you put it at 6 per cent. interest, as you must, and it is an outlay of the Government for thirty years, what would the amount be? And so for every succeeding year from now until 1900.

But, Mr. President, that is not the question; and it is not the question either whether I would have voted to charter these roads, for I know I would not if I had been a member of this body. I would not have voted to give these powers to these companies. I do not believe the policy was a wise one at the time; but it was adopted; the contract was made; the agreement was entered into; the valuable consideration passed; it became an executed contract, and I have learned that it is best to stand by your agreements.

When were they to begin to pay? They ought to have begun to pay their interest when it was due, according to my view. The Supreme Court thought differently, that interest ought not to be paid until the thirty years had run. I confess that my opinion runs on all fours with that of the honorable Senator from Vermont [Mr. EDMUNDS] in that particular, doubtless wrong because the Supreme Court has said we were both wrong; but it has struck me that if the Supreme Court had happened to be able to have seen the law as I did, it would have saved us all this trouble. But one branch of the Government, the Supreme Court of the United States, has laid its hand upon what I believe to be the law and made a law for us all; and because the Supreme Court has said that this interest is not due, and need not and shall not be paid until a certain day when the bonds become due and payable, the Judiciary Committee say they will begin now and they do not even call it payment, they dodge, they call it putting it into a sinking fund. The difference between that and payment is not so great that a man cannot see it unless he has his spectacles on. I owe my friend from Maine a thousand dollars which is payable five years hence. He comes to me and says "Now I cannot make you pay this, but it will not be payment if you let me take $100 a year and put it into a sinking fund; I will give you 5 per cent, interest on it and it will not be payment." "Oh," but I say to my friend from Maine, "Why, my brother BLAINE, I can make 10 per cent. by this money." Is it not payment? Is it not taking from me what I have a right to by law and appropriating it to pay a debt that is not due for ten years. It is not anything else. You may get around it by calling it any name you please, but it is payment, and forcing payment of money that is not due.

Mr. President, one of the desires of my heart is that these companies should proceed to do this thing. They can do it better now than they can twenty years hence; but it does not follow that you have got the power to make them do it. My eloquent friend from California, the Senator who sits farthest from me, [Mr. BOOTH,] drew a picture of graphic power—indeed it was eloquent, that here were two high contracting parties, the Government of the United States on the one side and these corporations on the other, that they were to meet diplomatically—I do not pretend to give his words—and they were to treat as two great powers. Well, why not? Strip it of its verb-

iage and use the language of a common-sense man, a plain man like I am, why not? It is done every day in every State in this Union where there are any corporations. Not once, but more than a hundred times in the Legislature of my State has a charter been altered and amended, to become the law when the corporation agrees to the amendment. The only way to get it is by agreement. The corporation desires to have its charter amended in a particular manner. What is to be done? The Legislature must authorize it. What next is to be done? In its corporate capacity, in its office, it must agree to the amendment and have the amendment entered upon its records. It is done everywhere. My friend from New Hampshire, my friend from Maine, every man that represents a manufacturing community, knows that this is the way in which the charters of corporations are always altered, and I know no reason—my friend from California may—why the Congress of the United States shall not agree with one of the railroad corporations, its own children, to alter and amend the charter so that it may begin to pay a debt that is not due for twenty years. On the contrary I know that it is good sense and wise statesmanship to do it. Nobody will gainsay it.

If my good friends here who now entertain no doubt of this power did entertain a doubt, they would not exercise it; if like me they entertained a doubt of the power, they would go with me in order to effect such an arrangement as that this debt might begin to be paid before it is due. That I shall try to do; that I shall not fail to do; and so far as any amendment can be added to this bill that will make a suitable bill for the acceptance of the people who are corporators under the laws of the United States, so far it will get my support. If this bill was defeated, I certainly could not vote for the bill of the Railroad Committee, unless great amendments were made to it, and because it does not strike me as a proper business bill. I will not talk any further on that subject at this time.

Now, Mr. President, but a word more, for I have already spoken longer than I intended when I rose. I desire to exercise all the power that I believe the Federal Legislature possesses in order to effect a good object so far as the payment of this debt of these railroad corporations is concerned. Further than that, I cannot, will not, go—cannot go without dishonor to myself. In the grant of power that governs me as a member of this body, I find no authority to take a corporation that is in default by the throat and violate the very contract and agreement which I entered into with it. I see no such power. Senators who do will exercise it. I do not. Therefore I must look to the next best thing, and that is to make an arrangement; and, as I said before, I repeat there is nothing dishonorable in it any more than there would be if it was a transaction between my friend from Kentucky [Mr. McCREERY] and myself of $20,000, no part of it being due for twenty years; if he and I could make an arrangement by which I could pay a portion of that debt before it became due, we ought to do it. As guardians of the public weal, having in hand the best interests of the people of this whole country, we ought to do that. To that I will direct myself at all times and in all places. If it is necessary I shall not hesitate to speak to the president of the railroad—I never saw him in my life that I know of. I may have seen him but not to know him. I may have passed him. I do not know that he has invaded the lobbies; I do not know that he has followed me to my home; but I never have seen him to know him. But, Mr. President, I shall not hesitate, as a Senator of the United States, to speak to the president of one of these corporations at any time and

suggest to him what would be wisdom for him as well as for the United States. To use an ordinary expression, it would not let me down any. It is a duty that I owe to my people, to the State which has honored me with a seat on this floor, to do all that I may honorably to adjust the matters between these two companies and the United States, and so believing, so I will do; and while I will stand firm as a rock, firm as granite, against what I believe to be unconstitutional legislation, I will devote myself, heart and soul, to effecting a compromise between this Government and these corporations that shall be alike honorable to both.

Mr. MITCHELL. Mr. President, I do not rise for the purpose of making a speech, but I do rise for the purpose of calling the attention of the Senate to a decision of the Supreme Court of the United States which I believe to sustain fully the very doctrine enunciated by the Senator from Connecticut who has just taken his seat, [Mr. EATON.] This opinion of the Supreme Court of the United States has not been quoted at length nor has it been commented on very much by the able lawyers of the Judiciary Committee who have sought to sustain the bill reported from that committee by their able arguments. I refer to the decision of the Supreme Court of the United States in the interest case, in the case of The United States *vs.* The Union Pacific Railroad Company, reported in 1 Otto.

It will be remembered that in that case the Supreme Court of the United States held, all the judges of that great court concurring, on the point which had been disputed so long and so ably by the very members of the Judiciary Committee that now report this bill, that the interest that the Government of the United States is paying semi-annually for the benefit of these companies was not refundable by the companies to the Government until the maturity of the bonds. That had been a disputed question in the Senate; that had been a disputed question before the Judiciary Committee of the Senate. It is true the great body of that able committee held as the Supreme Court of the United States has decided. It is also true that the chairman of the Judiciary Committee, the honorable Senator from Vermont who addressed the Senate at length to-day, did not agree with that committee at that time, but held to an opinion entirely different from the majority of the Judiciary Committee and to an opinion moreover in direct conflict with that afterward announced by the unanimous decision of the Supreme Court of the United States.

But what I desire to call attention to now is this, that in that opinion reported in 1 Otto, the Supreme Court of the United States not only decided the question before them, which was simply the question whether the interest was payable before or not until the maturity of the bonds, but they intimated in the very strongest possible manner that under the contract as it existed under existing laws there was no power in Congress to create a sinking fund without the consent of the companies out of which and with which to meet the payment of these bonds at their maturity, and the Supreme Court in that decision placed the question as to the security that the Government had retained in its hands with which to meet the payment of these bonds, upon precisely the same plane, the same footing as a part of the contract as they placed the provision in relation to the payment of interest. They regarded the provision in the one case precisely similar to the provision in the other case; that is to say, the provision in the law which when construed by the Supreme Court of the United States was to the effect that interest was not to be refunded to the Government by the companies until the maturity of the principal of the

bonds had the same relation to this contract as the other provision which stipulated what the security of the Government should be for the payment of the principal of the bonds at their maturity. And now I call attention to the language of the court upon that point to see if it is not just precisely as I state it. The court in speaking of this matter say:

> They created no obligation to keep down the interest, nor were they so intended. The provision for retaining the amount due for services rendered, and applying it toward the general indebtedness of the company to the Government, cannot be construed into a requirement that the company shall pay the interest from time to time, and the principal when due.

Now I call attention to what follows:

> It was in the discretion of Congress to make this requirement, and then, as collateral to it, provide a special fund or funds out of which the principal could be discharged. This Congress did not choose to do, but rested satisfied with the entire property of the company as security for the ultimate payment of the principal and interest, and in the mean time with special provisions looking to the reimbursement of the Government for interest paid by it, and to the application of the surplus, if any remained, to discharge the principal.

It was in the discretion of Congress to do what? "To make this requirement." What requirement was the court referring to? The requirement that these companies should refund to the Government the interest semi-annually. That was the requirement they referred to; and then the court proceeds:

> As collateral to it—

To do what? To—

> Provide a special fund or funds out of which the principal could be discharged.

Congress could not only have provided that the interest should be refunded semi-annually but they could have gone further, neither of which they did do, the court say. What further could they have done? They could have gone further and as the court say—

> As collateral to it, provide a special fund or funds out of which the principal could be discharged.

But the Government did not do that. Congress did not do either of those things. It neither provided that the interest should be paid semi-annually, nor did it provide collateral to that, as the Supreme Court say, that "a special fund or funds" should be provided with which to meet the principal of the bonds at maturity. The Supreme Court say that Congress might have done either of these things, and then go on to say that they did not do either, place them both as twin provisions in this contract, place them precisely upon the same footing as part and parcel of this contract made between the Government and these companies, and then, after laying down the law in that shape, the court proceed to say:

> This Congress did not choose to do, but rested satisfied with—

With what? What did Congress rest satisfied with? What was a part of the contract and one of its principal stipulations? Was it that the interest should be refunded semi-annually? Not at all. Was it that "a special fund or funds" should be provided with which to meet the maturity of the bonds? Not at all. What was it, then. Why, Mr. President, it was this, as stated by the Supreme Court of the United States:

> This Congress did not choose to do, but rested satisfied with the entire property of the company as security for the ultimate payment of the principal and interest, and in the mean time with special provisions looking to the reimbursement of the Government for interest paid by it and to the application of the surplus, if any remained, to discharge the principal.

And now hear what the court say in addition upon the question as to what the companies might have been willing to do or not been willing to do under this contract:

> The company, for obvious reasons, might be very willing to accept the bonds on these terms, and very unwilling to make an absolute promise to pay the interest as it accrued.

That is to say, while when the act of 1864 was passed originally the companies might have been willing to accept that act when the provision was not that they should create a fund with which to meet the maturity of the bonds, but that they should give security upon the entire property of the company to meet the maturity of the bonds, while, say the Supreme Court, the companies might have been willing to accept a charter containing these terms, they might not have been willing to accept a charter which provided that the interest should be refunded semi-annually or that they should create a fund or funds from year to year with which to meet the payment of the bonds at maturity.

And, Mr. President, no man, I care not how good a lawyer he may be, can successfully contend that the Supreme Court of the United States did not decide, so far as it had power to decide anything, that one of the essential terms of the original contract, one of the vital parts of the charter—I mean the act of 1864—was that the companies, instead of being compelled to provide a fund from year to year to meet the payment of the interest, were simply called upon to give security upon their entire property with which to meet that payment when the bonds should mature. The court say:

> The company, for obvious reasons, might be very willing to accept the bonds on these terms and very unwilling to make an absolute promise to pay the interest as it accrued.

And does my honorable friend from Ohio believe for one moment to-day that if the charter, instead of providing as it did provide, had provided that the companies should pay into the Treasury of the United States 25 per cent. of their net earnings every year with which to meet the payment of the bonds at maturity, it would be the same kind of a contract or that the companies would have accepted that kind of a contract? It seems to me not, Mr. President. The court say further:

> If it were in a condition, either during the progress or on the completion of the road, to earn anything, there would be no hardship in applying the compensation due it; but, as can be readily seen, if it were required to raise money every six months to pay interest when all its available means were necessary to the prosecution of the work, the burden might be very heavy. Congress did not see fit to impose it and thus place the company in a position to incur a forfeiture of all its grants in case of failure to provide the means to pay current interest. Besides, it is fair to infer that Congress supposed that the services to be rendered by the company to the Government would equal the interest to be paid. That this was not an unreasonable expectation is shown by the published statistics of the vast cost of transporting military and naval stores and the mails to the Pacific coast by the modes of transit then in use.

It has been said, and will be said again, that this point as to the power of Congress to create a sinking fund was not before the court in that case, and that the only point before the court was as to the extent of the payment of interest. However that may be, I have undertaken to show, and I think have shown, that the Supreme Court through its organ, Associate Justice DAVIS, in giving the opinion in that case, intimated in the clearest possible manner that there was no power now, without the consent of the companies, to create a fund or funds with which to meet the payment of these bonds at maturity.

Mr. EDMUNDS. Will you read the clause in which that intimation appears?

Mr. MITCHELL. I have read it, and I will read it again. I have read this opinion carefully and I cannot come to any other conclusion.

Mr. EDMUNDS. I want to hear just that point you were speaking of, that we have no power.

Mr. MITCHELL. The court say:

> The provision for retaining the amount due for services rendered, and applying it toward the general indebtedness of the company to the Government, cannot be construed into a requirement that the company shall pay the interest from time to time, and the principal when due. It was in the discretion of Congress to make this requirement—

What requirement? To refund the interest. That is what they were talking about there. But what follows?—

> and then, as collateral to it, provide a special fund or funds out of which the principal could be discharged.

What I said a moment ago while the honorable Senator was out was this, that the Supreme Court of the United States treats of these two provisions as parts of the contract, treats them as twin provisions of this contract, namely, first the payment of interest, which was not to take place until the maturity of the bonds, and, second, the kind of security that the Government retained in its hands or provided for when it passed this law.

Mr. EDMUNDS. But may I ask my honorable friend, if I do not disturb him, if the constitutionality of the acts of Congress that the court was called upon to expound was drawn in question? He will say of course that it was not.

Mr. MITCHELL. Of course I admit that the point before the Supreme Court for decision was simply as to whether or not the interest that the Government was to pay semi-annually for these companies should be refunded to the Government by the companies semi-annually or not until the maturity of the bonds. I admit that.

Mr. EDMUNDS. Then will not my friend also admit that all that the court was undertaking to do, so far as its effectual judgment was concerned, was to expound the meaning of the statutes on which the question arose?

Mr. MITCHELL. I admit that anything they may have said outside of the direct point in issue may be regarded as an *obiter dictum* in one sense, but they did go on to construe these statutes. It was necessary to give construction to these statutes in order to decide the actual point before the court.

Mr. EDMUNDS. Undoubtedly.

Mr. MITCHELL. "Undoubtedly" my friend says, and in doing that, after referring to the different clauses of the statutes, they say:

> It was in the discretion of Congress to make this requirement.

That was to require the interest to be repaid semi-annually, which Congress did not do. Say the court: 'It was in the discretion of Congress * * as collateral to it" to do something else. What was that something else? It was to "provide a special fund or funds out of which the principal could be discharged." But Congress did not do that.

Mr. EDMUNDS. Now does the Senator mean that that shows that the Supreme Court meant to say or had in their heads the notion that Congress had no power in future to make a provision of that character?

Mr. MITCHELL. I do most unquestionably believe that the Su-

preme Court of the United States in the language used there intimated, in the strongest manner that they could intimate in giving construction to these statutes, that there was no power in Congress to create a fund or funds, without the consent of the companies, with which to meet the payment of these bonds at their maturity, and the court gave a reason for it in the very same opinion, and that reason I will read:

> This Congress did not choose to do, but rested satisfied with the entire property of the company as security for the ultimate payment of the principal and interest, and in the mean time with special provisions looking to the reimbursement of the Government for interest paid by it and to the application of the surplus, if any remained, to discharge the principal.

Congress did not choose to do what? Congress did not choose to provide for the creation of a fund or funds, to use their language, with which to meet the payment of these bonds at their maturity. They did not choose to do that, but they did choose to do something else.

Mr. EDMUNDS. Therefore they cannot choose now!

Mr. MITCHELL. They did choose to do something else. What was that something else? They chose to take a legislative lien upon the property of these companies. That was what Congress chose to do in the passage of the act of 1864, and then the court go on to say: "The company, for obvious reasons, might be very willing to accept" a charter when the security was that kind of security stipulated in the act of 1864, while they might not be willing to accept a charter that fixed some other kind of security, or, to use the language of the Supreme Court, which would compel them to provide a special fund or funds out of which to pay these bonds at maturity.

That is all I desire to say, Mr. President.

Mr. WINDOM. Mr. President, if the Senate is ready to vote upon the question I will not ask leave to make a report from a committee of conference. If not, I should like to submit a report and have it acted upon.

Mr. COCKRELL and others. Let us go on with this.

Mr. WINDOM. It will take but a moment.

Mr. THURMAN. If the Senator merely wishes to have a committee of conference appointed of course it will take but a moment.

Mr. WINDOM. I ask leave to make a report from a committee of conference in order that another committee may be appointed.

Mr. THURMAN. To that I do not object.

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### THE PACIFIC RAILROADS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

The VICE-PRESIDENT. The question is on the amendment proposed by the Senator from Maine, [Mr. BLAINE,] upon which the yeas and nays have been ordered.

Mr. BLAINE. I desire to modify the amendment as I gave notice.

The VICE-PRESIDENT. The amendment, as modified, will be read.

Mr. THURMAN. The Senator cannot modify his amendment after the yeas and nays have been ordered.

Mr. BLAINE. Does the Senator make that objection?

Mr. THURMAN. He can offer it as an amendment to his amendment, perhaps.

Mr. BLAINE. I think there is nothing in the rules that would prevent my offering this as an amendment. I offer the following amendment, which, I think, will get around the exceedingly critical point of the Senator from Ohio. I offer it as an amendment to the bill.

The VICE-PRESIDENT. The amendment will be reported at length.

Mr. THURMAN. An amendment to the amendment?

Mr. BLAINE. A separate amendment at the end of section 12.

Mr. EDMUNDS. There is another amendment pending.

Mr. BLAINE. That is all true, but I offer this as an amendment. If Senators will not permit me to modify it, I can offer it in a certain place.

Mr. EDMUNDS. But you will have to wait for the proper time to come.

Mr. BLAINE. Now is the time.

Mr. EDMUNDS. But there is an amendment pending.

Mr. BLAINE. But I can offer it as an amendment to another section of the bill.

Mr. SARGENT. I rise to a point of order that the Senator has a right to modify his amendment at any time.

Mr. BLAINE. The yeas and nays were ordered yesterday, and the Senator from Ohio makes the point that I have not the right to modify it, which under a strict construction of the rule is probably true, if the Senator desires to hold me to that.

Mr. SARGENT. I do not know that. That is the very point of order I make, and I should like to have a decision of the Chair on it, whether the Senator has the right to modify his amendment.

Mr. BLAINE. It cannot be withdrawn; whether it can be modified or not I am not sure. It is not a very large point anyway, the Senate will observe.

The VICE-PRESIDENT. The rule will be read.

The Chief Clerk read Rule 44, as follows:

> Any motion or resolution may be withdrawn or modified by the mover at any time before a decision, amendment, or ordering of the yeas and nays, except a motion to reconsider, which shall not be withdrawn without leave of the Senate.

The VICE-PRESIDENT. The point is well taken by the Senator from Ohio.

Mr. BLAINE. I want——

The VICE-PRESIDENT. This not being an amendment to an amendment——

Mr. BLAINE. I understand; the point is well taken; I make no objection to it at all, but——

The VICE-PRESIDENT. The pending question is on the amendment first offered by the Senator from Maine.

Mr. BLAINE. Now, if one of the pages will hand me back that, I can make a remark and get the other amendment before the Senate. The reason why I do not put in the proviso separately is that I want a vote on my amendment as a whole, and I want it to come in at the end of the twelfth section because there are certain words in the twelfth section after the word "mentioned" which this was originally written to follow that seem to some members to be worth while preserving; and, as I intimated yesterday, if any Senator is better satisfied with the amendment at the end of the twelfth section, not striking out any of the words in the section, I am entirely willing

that it shall be so placed. As the Senator from Ohio objects to my perfecting it, I suppose he will object to my withdrawing the amendment. It is my desire to let the amendment which I have already offered go by and to have the vote of the Senate, the test upon it, come on the amendment which I have modified to meet every possible criticism which the Senator from Vermont this morning leveled against it; and as a whole my amendment will read thus:

But so long as said Central Pacific and Union Pacific Railroad Companies shall faithfully comply with the provisions of the said acts of 1862 and 1864, and of this act, relating to payments to the United States on account of the bonds advanced, and of the sinking funds to be established as aforesaid, such compliance shall be deemed and taken as sufficient to meet the obligations of said companies on account of such bonds prior to the maturity thereof: *Provided*, That the annual payment from each railroad company, in addition to the half-transportation account and the 5 per cent. of net earnings presently applicable to the interest on the bonds, shall never be less than $600,000 applicable to the sinking funds herein established, and that nothing in this act shall be construed to waive any claim of the United States against either of said railroad companies from whatever source arising.

I think those two provisions effectually dispose of all the windmills which the Senator from Vermont has constructed and then proceeded to fight. I do not think they add anything of strength to the amendment beyond the original text, except in the amount of money which they require; and if the Senator from Ohio stated the point correctly, as I presume he did the other day from his calculation, then this proviso exacts more money at least from the Union Pacific Railroad Company, if not from both, than the bill of the Senator from Ohio does. Instead of reducing the money payment into the Treasury of the United States for a sinking fund, this would increase it, and the moment the companies should go into default upon the 5 per cent. or upon the half transportation or upon the $600,000 in addition to both, then the power of Congress to step in and do just as it pleases with them would be restored in its fullest possible vigor. The only possible dispute that could grow up out of it would be in the matter of the 5 per cent., for possibly the Supreme Court might decide that 5 per cent. net earnings to be different from that which is embraced in the Judiciary Committee bill, although I do not know that they would, nor do I probably think much that they would, but they possibly might. But on the half transportation the Government has that in its own hands, and the $600,000 is certainly very easily counted. I think the Senator from Ohio had better not put the Senate to the trouble of voting upon an incomplete amendment, but let the vote come directly on mine as I have now perfected it.

Mr. THURMAN. The Senator from Maine, as I understand his amendment now, does not propose that $600,000 shall be in addition to the half transportation.

Mr. BLAINE. Certainly.

*Provided*, That the annual payment from each railroad company, in addition to the half-transportation account and the 5 per cent. of net earnings presently applicable to the interest on the bonds, shall never be less than $600,000.

Mr. THURMAN. Well, the half transportation and the 5 per cent. coupled together are those things which are now payable under the law.

Mr. BLAINE. That is what I said—"presently applicable."

Mr. THURMAN. They are presently applicable, and now all that the Senator requires in addition to that is $600,000 a year.

Mr. BLAINE. I say it shall never be less in any event. The Senator will see that it leaves all the requirements of his bill intact.

Mr. THURMAN. No, it does not.

Mr. BLAINE. Everything in his bill is left intact.

Mr. THURMAN. No.

Mr. McDONALD. I would call the Senator from Maine's attention to the report of the committee. From the Union Pacific the amount of cash payment, as stated there, if the provisions of this bill are realized, would be $850,000.

Mr. BLAINE. That is the very highest to which it may go; this does not interfere with that in the slightest degree.

Mr. McDONALD. This says it shall not be less than $600,000 as to the Central Pacific. The amount there required to be paid in is $1,200,000. Your proposition allows it to be reduced just one-half.

Mr. BLAINE. No, it does not.

Mr. McDONALD. It may be.

Mr. BLAINE. The Senator will pardon me. The Senator from Vermont was drawing a great picture here of all this concern going into eternal smash, that the stockholders were going to be a parcel of irresponsible men bent on ruining the whole property; they were going to sacrifice the first-mortgage bonds and going to sacrifice the sinking-fund bonds, and going to make the stock worthless and valueless, and they would go to default on the first-mortgage bonds, and then he says the amendment offered by the Senator from Maine has so tied up our hands that we cannot touch the thing at all. I answered him by putting in a proviso that, in addition to the 5 per cent. and the half transportation, they should in no event ever pay less than $600,000 a year for each company. The Senator from Ohio himself stated that the first year the Union Pacific would pay less than $600,000 under the bill, only $100,000 I think he said, in addition to the half transportation, which is not applicable to interest. So the very minimum that is contained in the proviso that I offer is more than the Senator himself proposes. It was in answer to this lugubrious picture of the stockholders having hold of a property worth $100,000,000 who would just for the fun of the thing ruin it to see if they could not fight the United States. That was the picture that the Senator from Vermont brought before us, that for the sake of spiting somebody and making the United States have trouble, they would ruin their own property. I think if there is any possible instinct to be relied upon, I think if there is any possible instinct in mankind that it is safe to legislate upon, it is that men will take care of their own interests and look after their own money. All the hypothetical cases presented by the Senator from Vermont went upon the supposition that these men would set to work deliberately to destroy their own property to see if they might not incidentally do some harm to the United States. I meet him with an amendment which puts that beyond the power of any possible construction. If the Senator from Ohio insists on having a vote on the original amendment, I hope nobody will vote in favor of it for the simple reason that I want the vote to come from any gentleman who may happen to sympathize with my views on this amendment if the Senator will not permit me to have it voted on directly.

The VICE-PRESIDENT. The question is on the amendment first offered by the Senator from Maine, upon which the yeas and nays have been ordered.

Mr. THURMAN. Mr. President, if there is any Senator who desires to speak, I do not wish to take the floor.

Mr. HILL. If the Senator from Ohio will allow me to make one remark I shall be content.

Mr. THURMAN. Very well.

Mr. HILL. The other afternoon, in a colloquy with the Senator

from Vermont, [Mr. EDMUNDS,] I stated that I endeavored to draw a distinction between the charter and the contract, which I tried to set forth. I referred to the case of Miller *vs.* The State, decided by the Supreme Court of the United States in 15 Wallace. I referred to the decision of the majority of the Court and the reasons given by the dissenting judges for their dissent in that case, and if it does not make clear this point, then I am sure I cannot understand plain law. I desire the Senate to remember that this point is applicable here, because the controversy arose there upon a contract which it was claimed was independent of the charter, was not a franchise, though contained in the charter or the act granting the charter, just as here this contract of loan is authorized by the same act that creates the Union Pacific Railroad Company; and the able Senator from Delaware [Mr. BAYARD] insisted that the words "to alter, amend, or repeal," being general, necessarily applied to everything in that act. I have been endeavoring to show to the Senate that those words could only apply to such portions of the act as they were properly applicable to in the nature of the thing. Now I simply want for a moment to call the attention of the Senate to that case of Miller *vs.* The State, and I want to read, in addition to the constitutional provision in New York, the provision of their general code. It is much stronger, I submit to the Senate, than the language of the reservation contained in either the act of 1862 or the act of 1864. Let us see the reservation under the laws of New York:

> First. The charter of every corporation that shall hereafter be granted by the Legislature shall be subject to alteration, suspension, and repeal, in the discretion of the Legislature.

That is the New York law; it shall be subject to alteration, suspension, and repeal, in the discretion of the Legislature. You say here that the reservation in the acts of 1862 and 1864 gives Congress discretionary power to alter, change, and repeal everything in these acts. What you claim as the construction of the acts of 1862 and 1864 is the very language of the law of New York. In spite of that language, when the Legislature of 1851 in New York amended the charter of a certain railroad company by which it changed the number of directors to which the city of Rochester was entitled, increased their number and lessened the number of directors to which the other stockholders were entitled, a point arose, and what was it? As to whether the Legislature had a right to make that change under this reservation which said they should have discretionary power to make changes. That was the very controversy. Now, then, what was the decision of the courts? It was decided by a divided court in New York, and it came here and was decided by a divided Supreme Court of the United States. The majority of the court say this in pronouncing the opinion:

> These last stockholders—
>
> The general stockholders—
>
> regarding the act of 1851 as making a contract that they should have nine directors and the city but four, and that the act of 1867 violated that contract, elected their old nine.

This is the syllabus of the court:

> Held, on a *quo warranto*, that the act of 1867 did not, in view of the State constitution and the act of 1828 making charters subject to alteration, suspension, and repeal, make such a contract, and that the act of 1867 was constitutional.

That court held that the change made by the act of 1867 was not a contract outside of the franchise, but was part of the franchise, and

therefore was constitutional. This is made clear by the dissenting opinion. Judge Bradley pronounced a dissenting opinion in that case, and Judge Field concurred.

Hear what they say:

I dissent from the opinion of the court in this case on the ground that the agreement with respect to the number of directors which the city of Rochester should elect was not a part of the charter of the company, but an agreement outside of and collateral to it.

That is the very point. If the whole court had believed that this change made by the act of 1867 was not a change in the franchise of the corporation, was not a change in the corporate authorities of the company, but affected an agreement which, though contained in the charter, was outside of and collateral to it, the court would have concurred and pronounced the act unconstitutional. The minority judges distinctly put their dissent on that ground; they believed that this contract in the original act authorizing the city of Rochester to have four directors and the other stockholders nine was an agreement, not a franchise, not a part of the charter, but an agreement outside of and collateral to it, and therefore was not subject to alteration, amendment, or repeal under that sweeping provision of the law of New York which gave the Legislature absolute discretion over the charter.

One more remark. The decision of Tomlinson *vs.* Jessup has been referred to; that came up from South Carolina, Mr. Justice Field pronouncing the decision. Here is the law stated in a nutshell, and it takes the very distinction that I draw and which I have been endeavoring to enforce upon this body:

The reservation—

A reservation like the one now under consideration. Says the court:

The reservation affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State.

Not other matters outside, not agreements that are not made directly by the charter, that are not granted directly. I concede here that this reservation reserves under legislative control all the rights, privileges, and powers of these corporations which they derived by direct grant from the State; but it does not keep within legislative control agreements that are not franchises in their nature, contracts for the loan of money, debt contracts. The Senator from Ohio the other day insisted upon using the general word "contract," and as the Legislature had the right to create a corporation, and as the creation of the corporation and the acceptance of the charter made the contract, he asked me if the Legislature did not have the right to change that under such a reservation. Certainly, but the difference is between a charter contract and a debt contract. A charter contract is a grant directly from the State, without money consideration; it is a grant solely for the public good. A debt contract is not a grant from the State. The State may be a party to it, but a debt contract exists by agreement, not by grant in the proper sense of the word "grant." It exists by agreement, agreement between two parties able to contract, willing to contract, and who do contract. That is a matter of legislative control. It takes two parties to change a contract, and it takes two to make it. A debt contract and a grant stand on a different footing. The grant of charter privileges, the grant of franchises directly from the State as authority stand wholly on a different footing. This loan is not a grant from the State. You call it so. It is

an agreement between the Government and the companies; it is an agreement founded on valuable consideration, and therefore it is beyond the power of legislative control.

Mr. President, we are told by Herodotus that King Cambyses became enamored of his own sister and desired to make her his wife. He was informed that the laws did not permit a brother to marry his sister. He called his royal judges into consultation and submitted to them the proposition whether the laws permitted a man to marry his sister. The judges decided that the laws did not permit a man to marry his sister; but they informed the king further that they had discovered another law, that the king could do as he pleased. Have we made no improvement upon that day? Is this a Government like that of the Persian king? If we have anything to boast of in this country it is that we have limited the powers of government, and one of the highest and most sacred limitations upon the powers of government is that they shall protect the contracts made by agreement between parties and founded in valuable consideration, and they shall not impair them or destroy them. Ah, there is not one law for a contract to which individuals are parties, and another law for contracts where the Government is a party. The law of contracts is the same, I care not whether the parties to the contract are artificial persons or natural persons, or whether they are individuals or whether they are governments. It is the glory and the boast of the character of our institutions that no government has a right to change and modify or alter or destroy a contract, a debt contract, a simple contract debt founded upon valuable consideration, whether the parties to that contract be corporations, individuals, or the Government, and no court has ever held so. And I say now to the gentlemen, I said two weeks ago, I challenge them to produce any case where a court in America has ever held that under these words of reservation the Legislature could change or alter a contract founded in consideration of private agreement or public agreement either, to which I mean the public is a party in the shape of the Government. You have not produced such a case. Every case you have brought here is a case changing the charter, changing the corporate franchises and privileges, and modifying them. You have never produced a case, and you never will produce a case, where the courts have held that the legislative power can change, alter, or modify a contract either by reservation or otherwise. This is a Government of granted powers. It derives all the powers it possesses from the people through the Constitution. It has no power to impair the obligation of a contract, and it cannot acquire that power by reserving it.

I adhere to my proposition, but I concede that the charter granted directly from the Government stands on a different footing.

Mr. SARGENT. Mr. President, I desire to detain the Senate but a few moments. There are two branches of this question, one which the Senator from Georgia has just remarked upon—the question of power. There is another question, one of policy. Upon the latter branch of the subject I desire to say a few words on account of something like criticism upon the position I have assumed that was made by the Senator from Vermont. The position I took, among others, was that there were great commercial objects to be attained by the building of the Central Pacific Railroad, benefits to transportation, not merely to the Territories and the Pacific coast and Western States, but also to the Government, and I contended that there was nothing in the former policy of the Government which would justify a heavy tax being laid upon the transportation between the Western

States and the Pacific coast. I desire, fortifying the position which I took and showing that I did not mean thereby to condone a debt or anything of that kind, to show what the policy of the Government has been in this respect toward other enterprises of the same character, that it never has considered the gifts or the loans which it made for the benefit of commerce as sums to be counted upon as a miser does upon his hoard, that a spirit of just liberality toward all sections of the Union up to this moment at any rate has characterized the course of Congress in these matters; and when I ask, in view of the facts which I shall state, I have no doubt familiar to every Senator who knows the course of our legislation, that something of the same spirit shall be used, something of the same regard for the great commerce of this road carried on between Chicago and San Francisco, I think I may well say to Senators that I do not make any unreasonable demand. I will refer to one or two instances, among others to the act which passed Congress:

For improving the navigation of the Mississippi River at Des Moines or Lower Rapids, according to such plan as the Secretary of War shall, on the report of the board of engineers, approve, $500,000.

This was the first in a series of appropriations for a work which cost $4,000,000 to build a canal for the benefit of commerce, and there was attached to that grant a proviso—

That any canal that may be constructed around said Des Moines, or Lower Rapids of the Mississippi River, shall be and forever remain free to the navigation and commerce of said river, and no tolls shall ever be collected thereon.

Now, compound that amount according to the principle which it is announced that it is just to apply to the debt owed by the Pacific Railroad Companies, which was incurred exactly for the same object, for the benefit of commerce, and the interest for the first year would be $200,000 at only 5 per cent., and the next year $210,000, and so it would go on by arithmetical progression until the year 1900 or any other time that may be arbitrarily fixed, and it would amount to an enormous sum. And yet that was not the calculation that was made by Congress. The whole amount of the original appropriations was freely given and no account was made of interest whatever ever to come back to the coffers of the United States for the benefit of commerce in that regard. I was in Congress at the time that measure passed and I voted for it, for I have always believed in being liberal to the commerce of the country in providing it facilities and not bearing it down by oppressive exactions.

With reference to this very Des Moines Rapids Canal, allow me to say that Congress has to make an annual appropriation for the expense not only of repairs but to work the locks of the canal with employés all along it. How absurd the proposition would seem to come in here and ask that the engineers and firemen and brakemen of the Central and Union Pacific Railroads should be paid by the Government as the men who work the machinery of this canal are annually paid by the Government of the United States, and this with all the principal and interest is thrown into the gulf for the benefit of commerce.

Take as another illustration the instance of the Louisville and Portland Canal, which was a canal built by a private company for private gain. They had a debt of $1,200,000, as near as my recollection runs back to the debates of the day when Congress assumed that debt. After having appropriated upon this private work belonging to individuals, the title not being in the Government, nearly a million dollars more——

Mr. THURMAN. But the Government made money out of that canal.

Mr. SARGENT. The Government has made money out of the Central Pacific Railroad and the Union Pacific Railroad, and that is just the point I make.

Mr. THURMAN. Not in the same sense. The Government by its stock in the Louisville Canal made more money than it ever expended on the canal.

Mr. SARGENT. The Government assumed the indebtedness of that canal and paid off its bonds to the extent of $1,200,000 and never got a dollar of it back into the Treasury. I challenge an examination of the record on that point, because I remember the debate distinctly, as I participated in it in the House of Representatives. I have not looked at it since that time, but I remember it distinctly. I say that amount was given for the benefit of commerce on the Ohio River and of the people in that region. Compound the amount, as you say——

Mr. THURMAN. Why does not the Senator bring in a bill to sponge out this debt of these meritorious companies.

Mr. SARGENT. I do not propose to do anything of the kind. I do not ask the Senate to do anything of the kind. There is the rapidity of logic; the Senator jumps from one extreme to the other. He supposes because we complain that his bill is harsh and holds the rod over these companies who are placed in the attitude of a culprit, that therefore we are in favor of freeing them from their obligations. I am not asking, and I have not asked, for any such proposition. I say, however, this was not the spirit in which Congress has dealt with enterprises of this kind heretofore, and that it is not just to the people of the Pacific whom I represent. I stand here in the interest of my own constituency, and in the same spirit in which I was in favor of this legislation from the beginning—for I wrote the original Pacific Railroad act and urged it through Congress—I say you should not make the road a curse instead of a blessing to the Territories which it traverses and the people who are living there, and who are dependent upon it for their facilities in carrying on enterprises. These which I have referred to are small benefits which the Government has conferred on commerce, and it never thought of compounding interest and counting it out as a miser and doling it dollar by dollar.

I have a table here running nearly from the foundation of the Government, but it is sufficient to go back ten years. Congress has appropriated $38,000,000 in the improvement of the facilities of commerce during the last ten years. Will some ready reckoner compound the interest upon that amount? Compound it at 5 per cent. a year for thirty years and see how much the Government has lost, out of how much the Government has been cheated. The Government has gained, as it did by the Louisville Canal, as it did by the Des Moines Rapids Canal, as it did by the Pacific Railroad, by developing the resources of the country, by making tax-paying communities, by enhancing the wealth in all its boundaries. In 1867 the amount of $4,486,281.70 was appropriated for purposes of this kind. In 1868 $1,601,530 was appropriated. In 1869 $2,200,000 was appropriated. In 1870 $4,256,400 was appropriated. In 1871 $5,023,000 was appropriated; in 1872, $5,195,000; in 1873, $5,918,900; in 1874, $5,444,000; in 1875, $6,643,517.50; in 1876, $5,025,000; and there has just been reported a bill in the House of Representatives making an appropriation of $7,000,000 more, a large amount of which undoubtedly will be

appropriated by Congress for purposes of this kind. What did Senators say with reference to the improvement of the Mississippi River by means of the Eads jetties? Five and a half million dollars were appropriated for that purpose. That is the original cost of the work. Does anybody complain? It gives an outlet to the commerce of the great Mississippi Valley, benefits the State of the Senator from Ohio. California is far off. I do not know that I can stir the soul of the Senator from Vermont, or that of the Senator from Ohio with any emotion that I feel with regard to the people of the Pacific, but I say the Pacific Railroad is our Mississippi River. Do the Senators object to the five and a half millions that were paid to clear away the sandbars at the mouth of the Mississippi River by means of the Eads jetties or to the annual appropriation we have to make of $150,000 to maintain the work over and above the price? In the language of the Senator from Connecticut, "I trow not."

Now, then, I say that something of the same spirit should be shown when a bill is before Congress the effect of which is to put an annual charge of $4,000,000 upon the commerce of the Pacific States which goes overland by the railroads, for that is the effect of the measure. I admit that there is a hoard of savings which has been made by the construction and the operating of the road, but how soon will $4,000,000 per annum exhaust it? Two, three, or four years hence will exhaust it, in one day, and then the companies will have all their reserve used up, and if they have availed themselves of the privilege which is given by the original legislation of 10 per cent. dividend it will be soon used up, in two or three years; and then comes the direct dragging burden upon the commerce that goes over the road. Somebody has got to pay it, and who? Those who travel upon the road; those who send merchandise over it; ay, sir, and the Government which sends its transportation over it, although the Government has acted in such a mean and improper spirit in that matter that when it could by its own contract with the companies get one-half of its transportation applied upon the debt, instead of doing that it has sent the goods which it wanted to send to San Francisco around the Isthmus or by some other method. I suppose this was by inattention of the Departments. Whatever the reason was, the Government has sent a vast amount of transportation by the Isthmus, one-half of which it could have applied presently upon this debt instead by giving the companies the opportunity to carry it. I say the effect of such a measure will be that the communities there which are now springing forward into a state of comparative prosperity and are able to work low grade ores because they can get cheap machinery for mines that are little productive, because they have the facilities furnished by the railroad, will be compelled to stop under the increased exactions which may be brought about by this legislation.

That is the motive under which I stand here and say that if with justice and fairness to the Government a rate of sinking fund can be fixed which will avoid these disasters, it ought to be done. That is the business aspect of this proposition which I principally insist upon.

Mr. HOWE. Mr. President, I want to say two or three things in reply to the Senator from California. He says we ought to treat these companies liberally. So I say. I ask him if the companies have not been treated liberally? The Government advanced them moneys which the Government borrows and on which we are paying interest annually.

Mr. SARGENT. I am not complaining of past treatment.

Mr. HOWE. We defer the payment of that interest until the ex-

piration of the loan. Simple interest on the moneys that we disburse annually, calculated up to the time that we require them to repay that interest, would more than build the roads. We have therefore laid upon the people of the country a tax more, very much more, than the construction of the roads. Is not that liberality?

The Senator says now that we have been very liberal to commerce in other sections, and he points at the appropriations we have made for the benefit of commerce. That is one thing; the railway companies are another. If I do not misunderstand the whole scope of this attempted legislation, it has nothing to do with commerce, nothing to do with fares, nothing to do with rates of transportation. It does not propose to reduce or to increase the revenues of the companies one dollar. It is a simple question what the companies ought to do with reference to their debt. They are already running upon rates of transportation which they have fixed themselves, and which nobody now proposes to interfere with. The Senator from California, least of all, proposes to legislate in regard to that. The Senator makes a sort of sectional appeal to us.

Mr. SARGENT. Not at all.

Mr. HOWE. In one sense.

Mr. SARGENT. I had no such purpose at all. I simply claim for my section that which we have meted out uniformly to Wisconsin, which by this list that I have gone over received a sum as large, I am glad to say, as any section of the country, and more.

Mr. HOWE. Mr. President, in no improper sense did the Senator make a sectional appeal, and I was going to reply to it by saying that there is no sectional interest involved in this question. He has called this railroad the Mississippi River of the Pacific slope. I beg to remind him that it is just as much the Mississippi of the East as it is of the West. Just so far as commerce is interested in this question, it is the commerce of the East as much as the commerce of the West. If we repress commerce by this legislation, we repress a commerce which is the common interest of the whole country. That is the way I look at it.

Mr. ALLISON. Mr. President, I desire to occupy the Senate but a few moments, and more with a view to ascertain the true construction of the amendment proposed by the Senator from Maine than for any other purpose.

When the Senator from Maine first introduced his proposition it seemed to me to be a wise one, and I entertained that judgment until it was so severely attacked by the honorable Senator from Ohio who has charge of this bill. He told us yesterday that the amendment was prussic acid to this bill, that it is the poisoned drop that is to be the death of this legislation. If that be true, I shall join hands with the Senator from Ohio and vote against the amendment of the Senator from Maine. But all the arguments thus far that I have heard in opposition to the amendment are not arguments which commend themselves to my judgment, and the colloquy which has just occurred between the Senator from California and the Senator from Wisconsin more than confirms me in the justice of the amendment.

There is a provision in this charter that no one in this debate has said we could not lay our hands upon, namely, the provision that when the earnings of these companies shall exceed 10 per cent. on the cost of the railroads Congress may lay its hands on the corporations and reduce the rates of compensation for the great commerce which threads its pathway from ocean to ocean and from continent to continent. If

this question is to be opened up in another direction, so that whatever laying hands there is to be on these corporations shall be in the direction of more exactions in order to hasten the payment of this debt, then with what face can we say to these railway companies, "You shall reduce the rates of compensation charged upon freight and traffic that goes over your great lines of railway?" I believe in that view that it is important that whatever we deem necessary and essential to protect the interests of this Government should be fixed here and now with reference to this debt, so that if the earnings of these railways shall in the future increase we shall then exercise the power that we have a right to exercise in the interest of the commerce of this people in compelling these railway corporations to reduce their rates of compensation.

There is a growing evil, I will tell the honorable Senator from Ohio, in some sections of the country which these railways traverse, which are deeply interested in some Government regulation upon this question. It has been more than hinted at heretofore with reference to the suspected violations of one of the provisions of the law of 1864. If we are to open up this question constantly for the purpose of drawing into the Treasury of the United States hereafter, as we may choose, further sums in order to hasten the payment of this debt, how can we with any face go to these corporations with a law compelling them to reduce their rates of traffic or rates of fare?

I make these suggestions more for the purpose of receiving an answer from the honorable Senator from Ohio than for the purpose of making absolute assertions of my own. The proposition of the Senator from Maine, as I understand it, takes not away one whit from the efficiency and force of the bill as reported by the Judiciary Committee. That bill stands with all its power and in all its relations as though that amendment had not been presented. That bill, as I understand it, provides a maximum sum that we are to require from these corporations, namely: they are to pay, or the Government is to retain, the one-half of the transportation; in addition to that, it is to retain in one case $1,200,000, and in the other $150,000 or so much of that sum as with certain other sums shall make up 25 per cent. of the net earnings of these railway corporations. The amendment as modified by the Senator from Maine provides that there shall be, in addition to that, a minimum sum, namely, $600,000 at least, from each company, which shall be applied to this purpose. Certainly to that extent it is an improvement upon the bill proposed by the Judiciary Committee.

Mr. EDMUNDS. Not an improvement in the interest of the companies who, as they say, may have a dry year and nothing to carry.

Mr. ALLISON. But may I ask the Senator from Vermont, because I only want information on this point, is there in the bill as reported from the Judiciary Committee a minimum sum fixed, or is there any such provision as may make it impossible, or rather improbable, that these railway companies will pay into the Treasury a single dollar save and except that sum retained for half transportation, which the estimate of the Judiciary Committee fixes at $421,000?

Mr. EDMUNDS. Certainly not. There is no minimum sum because the companies by their directors, and presidents, and counsel, pressed upon us the danger of any legislation which should fix a minimum sum, because they said "great floods, drouths, everything which will affect the products of a people, and so the operations of a railroad, may find us a year when after paying the interest on the first mortgage, and sometimes perhaps without it, there will be no net earnings, upon the construction of the Judiciary Committee bill; and in

such a case, unless you wish to ruin us, you should not compel us to borrow money to put in." That had force with us, and trying to act impartially between the companies and the rights of the people, we made no minimum. Now the Senator from Maine says they shall have a minimum.

Mr. ALLISON. Then in that respect I find I was not mistaken, because even in such years of drouths and floods and rains and storms, or whatever, under the proposition of the Senator from Maine, there must be $600,000 paid into the Treasury on account of this proposition.

Mr. BLAINE. In addition.

Mr. ALLISON. In addition. Therefore, and this is what I desire to call the attention of the honorable Senator from Ohio to, if this is a reasonable proposition with reference to the debt, why should it not stand as long as these companies comply with it? That is a proposition which addresses itself, it seems to me, to the common sense and common judgment of anybody.

Upon the question as to the reasonableness of this proposition, I have had some investigations made for my own conduct with regard to the vote I should give upon this very subject. If I understand the Judiciary Committee bill its minimum will be about as stated by the honorable Senator from Ohio, namely, it would leave somewhere in the neighborhood of twenty millions of principal due from each of these companies at the end of twenty-two years or twenty years, as the case may be; but the capacities and capabilities of the bill under the proposition of the Judiciary Committee are far beyond that. That the Senator from Ohio will see if he makes a careful calculation. He submits in the report accompanying the bill that the sum of $1,900,000 from each of these companies would be paid into the Treasury under the provisions of the bill. It will not require the sum of $1,900,000 on the part of these companies to pay principal and interest back and forward of the entire debt of both these companies to the United States. That sum will more than pay it and would leave a balance, as I understand the calculation, due to these companies upon the basis of the decision of the Supreme Court at the end of the time.

Mr. THURMAN. Now, if my friend will allow me to interrupt him, suppose it would do just that thing, it will not pay the first mortgage and the debt of the United States, and the first mortgage will be entitled to be first paid.

Mr. ALLISON. Undoubtedly; but is it wise or is it desirable to so tax the commerce of this country as that it shall be required to pay not only the principal and interest of this debt to the Government of the United States, but also to pay the first mortgage due at the end of this time?

Mr. PADDOCK. I should like to inquire of the Senator from Iowa, if the Senator in charge of the bill acquiesces, if he would not be willing to give way for a motion to adjourn?

Mr. ALLISON. I shall leave that to the Senator from Ohio.

Mr. PADDOCK. There is a disposition to debate this question somewhat further and I suggest to my friend, the Senator from Ohio who has charge of the bill, that we had better adjourn.

Mr. THURMAN. Oh, no.

Mr. ALLISON. I cannot give way for such a motion without the consent of the Senator from Ohio.

Mr. PADDOCK. I will not press the motion unless both Senators acquiesce in it.

Mr. ALLISON. I only mean to occupy a moment longer. With reference to the suggestion made by the honorable Senator from Ohio in regard to the first-mortgage bonds, I must say that I do not

share the apprehensions of my friend from Wisconsin with reference to what will be the effect upon these railway corporations at the end of twenty years. I have no doubt that this very day, if these corporations could be purchased by railway companies that both he and I know of, they would gladly take these roads at a considerable advance upon what is their present nominal value, debts and all. It is probably true that a railway could be built alongside of the track now held and owned by the Union Pacific Railway Company for $18,000 or $20,000 per mile. It is also true that a track could be laid between here and Baltimore alongside of the Baltimore and Ohio Railway for $20,000 a mile; but who is going to lay that track or invest money in any such enterprise? The whole capital stock of the New York Central Railway is $128,000,000, including its bonded debt, as shown by Poor's Manual, which I have here before me. The cost of that railway undoubtedly to-day would not be more than 50 per cent. of that sum; yet, does any one believe that capitalists would invest money in a rival enterprise to that great railway extending from the lakes to tide-water?

No, Mr. President, when these mortgages mature there is no question of the fact that there will be found somebody willing to pay not only the first mortgage for these great railways, but to pay the second as well, because in the very nature of things by that time, so far as the country adjacent to them is concerned, they will practically have the control of the traffic.

But the Senator from Maine has offered this amendment, modified now so as to cover, it seems to me, every possible objection that can be made to it, unless it be that we intend here year by year to make further exactions of these companies for the purpose of facilitating the time when this debt will be paid. If the honorable Senator in charge of this bill will make a calculation he will see that the $1,900,000 which he estimates in his report will considerably more than pay this debt, principal and interest, at the time of the maturity of the bonds. If this is to be done in the future it will be done to the detriment of the great populations that are compelled to use these roads for local and through traffic. It will be done at the expense of high rates of fare and high rates of transportation. Representing as I do a constituency somewhat interested in this question, I do not feel myself willing to make such exactions from these companies as will require them in turn to tax largely the people from Chicago to San Francisco who may be compelled to use this railway.

Mr. President, I only offer these suggestions with a view of seeing whether or not there are objections to this amendment which are not apparent in my mind.

Mr. PATTERSON, (at five o'clock and thirty-five minutes p. m.) I move that the Senate do now adjourn.

Mr. THURMAN. I hope the Senator will withdraw that motion for a moment till I say a word, and then he may renew it.

Mr. PATTERSON. Certainly for a moment, but I do not want to lose the floor.

Mr. THURMAN. I ask the Senate to sit this bill out to-night, because, in my judgment, debate upon it is substantially exhausted, and because, according to my experience, we shall have to sit it out no matter on what day we take the vote. I think it is time that this bill were out of the way. Of course that is a matter for the Senate to decide for itself with reference to its own convenience. I have this, however, to say, that if the Senate is unwilling to sit the bill out to-night, I do hope that those who still wish to speak on the bill will speak to-night, and then give me to-morrow morning a short

time—for I shall not need much, at least I shall not take much—to speak in the close of the debate, and then let us come to a vote.

Mr. SPENCER. Suppose we agree to vote at one o'clock to-morrow.

Mr. THURMAN. Not at one o'clock; that would cut me off entirely.

Mr. SPENCER. Then say three o'clock.

Mr. THURMAN. There is always this difficulty about fixing a time at which we can come to a vote——

Mr. PATTERSON. But it has been done.

Mr. RANSOM. It is always done; it always has been done.

Mr. PADDOCK. I ask the Senator from Ohio if there is any such state of pressing business before the Senate as to require that it shall be subjected to discomfort and annoyance in reference to this matter by a refusal to adjourn at this time? I do not understand that the public business is suffering by reason of the procrastination of this debate. It seems to me that it may be well enough to adjourn until to-morrow and give the Senate the opportunity of further consideration.

Mr. THURMAN. I do not hear a word the Senator says; yes, I did catch one word of the Senator from Nebraska, "any such pressing haste." If the Senator will look at the debates of the British Parliament whose sway is over every quarter of the globe more or less, he will not find in twenty years a debate in the house of commons that lasted two days. But the debate on this bill has lasted now nearly one month, and at the last Congress it lasted for weeks. Four-fifths nearly of the Senators on this floor have spoken on the bill, so that there has not been a word said on the bill scarcely for the last week that was not a repetition of what had been said before.

Mr. PADDOCK. If the Senator will give way——

Mr. THURMAN. I do not wish to be interrupted just now. Yet there is complaint about hurrying this bill; complaint that there is a forcing of this bill, as if there were some tyranny or oppression in asking the Senate at last to vote upon a bill that has been discussed now nearly one month in this Senate, and that was discussed weeks during the session last winter.

Mr. PADDOCK. I should like to inquire of the Senator from Ohio if he objects to debate when debate does not procrastinate the determination of the question. The business of the Senate is in such a condition that there certainly is no urgency which requires of the Senate to subject itself to discomfort in order to procure a premature determination of this question; and it would be premature, I say, to force a vote when there are other Senators who wish to discuss the measure. There is no business before the Senate pressing upon us that I know of.

Mr. THURMAN. There is no business here! If the measures come before the Senate that are likely to come before it and are considered by the Senate, the middle of August will not see an end of this session. It will only be by pushing aside other business or deciding it without sufficient debate, that the Senate can adjourn before the middle of August if all the great measures which are now pending in one or the other of the two Houses shall have to be decided. Nothing! Is there nothing in the tariff bill, which may pass the House for aught we know? Is there nothing in the bill for the reorganization of the Army? Is there nothing in the proposition to amend the Constitution in regard to the election of President? Is there nothing in the bill to regulate the count of the presidential vote? Is there nothing in the appropriation bills? Is there nothing in all

these that we can idle our time here in mere speech-making? According to the idea of the Senator from Nebraska——

Mr. PADDOCK. Mr. President——

Mr. THURMAN. I am perfectly willing to hear my friend from Nebraska. I always listen to him with pleasure, and I will agree to sit here till nine o'clock to-night to listen to him if he wants to speak so long.

Mr. PADDOCK. My friend is very kind and very courteous. I do not often interrupt the Senator; but I wish to make this inquiry of him: Is there any measure of public concern reported from any important committee of this body before the Senate to-day for consideration that makes it necessary for the Senate to sit the whole night here in order to consider the question? I for one have a remark or two to make upon this bill, and I prefer to make it to-morrow if it is exactly to the convenience of the Senate that I should do it to-morrow as well as to-day.

Mr. THURMAN. I certainly have no objection to the Senator from Nebraska speaking on the bill; indeed, I hope to hear him speak upon it; but when he says there is nothing before the Senate, let me tell him that if this bill or any bill on this subject is to become a law it must be sent to the House of Representatives in due time for the House to consider it. As I understand, the tariff bill is made the order of the day for next Monday in the House. So I have been informed. I understand from the gentleman who has that bill, I believe, in charge that he intends to allow one month's debate upon it in the House of Representatives. If that be so, and this bill should be sent there too late to be taken up and passed this week, as it probably will be if it goes over to-day, then it is postponed in the House for one month. I do not want to risk any such thing as that. I know that there is business in the other House as well as here, and that that House is to consider this question as well as the Senate. Of course I am under the direction of the Senate. All that I can do is my duty. That I propose to do. If the Senate overrules me I cannot help it. If it is the purpose of the Senate to adjourn now until to-morrow, it may do so; but for my own part my judgment is that we ought to sit this bill out.

Mr. SPENCER. Let us take the question on adjournment.

Mr. PATTERSON. I renew my motion now.

Mr. BLAINE. I wish to make a suggestion to the honorable Senator from Ohio before the vote is taken on the motion to adjourn. In the case of a bill of this magnitude, which has been so long under discussion and on which there are several amendments pending and more to be offered, I suggest to the Senator whether it might not be well to have a five-minute debate upon it, and have general consent that to-morrow we proceed with the bill under the five-minute rule. Of course I would except the honorable Senator in charge of the bill.

Mr. SARGENT. And the Senator from Nebraska, [Mr. PADDOCK.]

Mr. BLAINE. And the Senator from Nebraska, who desires to speak more at length. The Senator from Ohio will observe that in regard to the measures of which he spoke, not one is here for our action. If we should close the debate on this bill and come to a final vote to-night, there is not one of those measures which would be here for the consideration of the Senate to-morrow.

Mr. THURMAN. There is an appropriation bill on the Calendar.

Mr. BLAINE. That is a very slight bill, a deficiency bill. There is not one regular appropriation bill ready. We can adjourn and have an understanding that to-morrow at five o'clock, or half past five, or four, I do not care what the hour is, so that we agree, we shall vote;

but what is the need of subjecting ourselves to discomfort for nothing? I do not wish to interfere with the Senator who has charge of the bill at all. I know his responsibilities in this matter.

Mr. THURMAN. Here are Senators whose business calls them home. Here is the Senator from Michigan [Mr. CHRISTIANCY] who is called home, and the Senator from North Carolina [Mr. MERRIMON] is called home. I do not know when we can get so full a Senate as we have to-day.

Mr. BLAINE. We shall have it to-morrow, and we can apply the five-minute rule and finish the bill in good time.

Mr. THURMAN. If we are to adjourn upon any such understanding, the Senator sees the difficulty about that. Let us suppose, for instance, that the amendment of the Senator from Colorado [Mr. CHAFFEE] should be offered. That is not an amendment that can be considered under a five-minute rule. Nobody would be satisfied with five minutes' discussion of that amendment. What are you going to do about it?

Mr. BLAINE. I think the Senator suggested that the debate had been already exhausted.

Mr. THURMAN. Yes, on the bill as it has been presented to the Senate.

Mr. COCKRELL. Is the motion to adjourn pending?

The VICE-PRESIDENT. It is pending.

Mr. COCKRELL. Is it debatable?

The VICE-PRESIDENT. It is not, but debate is proceeding by unanimous consent.

Mr. COCKRELL. I ask for a vote on the question.

The VICE-PRESIDENT. The question is on the motion of the Senator from South Carolina, [Mr. PATTERSON,] that the Senate adjourn.

Mr. CHRISTIANCY. On that motion I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. WALLACE, (when his name was called.) On this question of adjournment I am paired with the Senator from Nevada, [Mr. JONES.] If he were here, he would vote "yea" and I should vote "nay."

The roll-call having been concluded, the result was announced—yeas 29, nays 36; as follows:

YEAS—29.

| | | | |
|---|---|---|---|
| Allison, | Dennis, | Kellogg, | Sargent, |
| Barnum, | Dorsey, | Lamar, | Saunders, |
| Blaine, | Eaton, | Matthews, | Spencer, |
| Bruce, | Ferry, | Mitchell, | Teller, |
| Cameron of Wis., | Gordon, | Morrill, | Windom. |
| Chaffee, | Hill, | Paddock, | |
| Conover, | Ingalls, | Patterson, | |
| Dawes, | Jones of Florida, | Rollins, | |

NAYS—36.

| | | | |
|---|---|---|---|
| Anthony, | Cockrell, | Hereford, | Morgan, |
| Armstrong, | Coke, | Johnston, | Oglesby, |
| Bailey, | Davis of Illinois, | Kernan, | Plumb, |
| Bayard, | Davis of West Va., | McCreery, | Randolph, |
| Beck, | Edmunds, | McDonald, | Ransom, |
| Booth, | Eustis, | McMillan, | Saulsbury, |
| Burnside, | Garland, | McPherson, | Thurman, |
| Butler, | Grover, | Maxey, | Voorhees, |
| Christiancy. | Harris, | Merrimon, | Wadleigh, |

ABSENT—11.

| | | | |
|---|---|---|---|
| Cameron of Pa., | Hoar, | Kirkwood, | Whyte, |
| Conkling, | Howe, | Sharon, | Withers. |
| Hamlin, | Jones of Nevada, | Wallace. | |

So the Senate refused to adjourn.

The VICE-PRESIDENT. The question recurs on the amendment of the Senator from Maine, [Mr. BLAINE,] on which the yeas and nays have been ordered.

Mr. ALLISON. Before the vote is taken I desire to know which is the pending amendment, as the Senator from Maine proposed two amendments.

The VICE-PRESIDENT. The question is upon the first amendment indicated by the Senator from Maine.

Mr. THURMAN. If there is any Senator, I repeat, who wishes to speak, I do not desire to occupy the floor at this time.

Mr. EDMUNDS. I suggest to my friend to let us take the vote on this first amendment, which I believe the mover himself does not expect to be adopted. When the next amendment comes up, that will be perfectly in order, and the Senator I suggest had better speak then, and we shall get rid of the pending amendment first.

Mr. THURMAN. Do I understand that the Senator from Maine proposes to abandon this amendment and then to offer the amendment drawn out as he has suggested it?

Mr. BLAINE. I proposed to do that, but the Senator from Ohio would not permit me.

Mr. EDMUNDS. He does not object to your withdrawing it.

Mr. THURMAN. Then let us vote upon that amendment, and vote it down, as a matter of course.

Mr. ALLISON. The yeas and nays have been ordered upon it.

Mr. BLAINE. The yeas and nays were ordered upon it. Let the vote be taken on the amendment I offered. If that should be adopted I will offer the proviso there is in the other amendment. If it shall be rejected then I shall immediately offer the amendment which I suggested, adding the proviso to that.

Mr. THURMAN. Very well.

Mr. ALLISON. Can I not move to reconsider the vote by which the yeas and nays were ordered upon the amendment of the Senator from Maine?

Mr. SARGENT. There would be really nothing gained by the Senator doing that.

Mr. BLAINE. If I am permitted, I will simply withdraw one amendment and offer the other.

Mr. EDMUNDS. Very well, let the Senator withdraw that amendment.

Mr. SARGENT. I shall not agree to that.

Mr. BLAINE. Does the Senator from Ohio agree to that?

Mr. THURMAN. No.

Mr. ALLISON. Then I move to reconsider the vote by which the yeas and nays were ordered, so that we can have a *viva voce* vote upon the amendment without taking up the time of the Senate.

Mr. EDMUNDS. The Senator cannot move to reconsider that vote. That will not amount to anything.

Mr. PADDOCK. I should like to inquire what the question is before the Senate.

The VICE-PRESIDENT. The question before the Senate is upon the first amendment offered by the Senator from Maine.

Mr. BLAINE. I will explain it with the permission of the Senate. In section 12 I shall move to strike out all after the word "mentioned" in line 4 and insert:

But so long as said Central Pacific and Union Pacific Railroad Companies shall faithfully comply with the provisions of the said acts of 1862 and 1864 and of this

act, relating to payments to the United States on account of the bonds advanced, and of the sinking funds to be established as aforesaid, such compliance shall be deemed and taken as sufficient to meet the obligations of said companies on account of such bonds prior to the maturity thereof.

Now I wish to add to that the following proviso:

*Provided*, That the annual payment from each railroad company, in addition to the half-transportation account and the 5 per cent. of net earnings presently applicable to the interest on the bonds, shall never be less than $600,000, including the other half of the transportation account applicable to the sinking funds herein established; and that nothing in this act shall be construed to waive any claim of the United States against either of said railroad companies, from whatever source arising.

I propose to offer that as one whole substantive amendment when the pending amendment is got out of the way.

Mr. PADDOCK. I should like to inquire of the Senator from Maine if he offers that as a substitute for his first amendment.

Mr. BLAINE. The Senator from Ohio has two or three times refused to permit the amendment to be withdrawn, and of course the Senate will have to go through the trouble of voting upon it.

Mr. THURMAN. I am very indifferent as to what is done. The Senator from Maine can move his proviso to the present amendment. The amendment is only an amendment in the first degree, and that would only be an amendment in the second degree. It is perfectly competent for him to do that without any consent or withdrawal or anything else. But in order to "speed the plow," I consent so far as I can give it (it requires unanimous consent) that the Senator may withdraw the pending amendment and then he can offer the amendment that he has just stated.

Mr. BLAINE. I am much obliged to the Senator.

The VICE-PRESIDENT. By unanimous consent, the first amendment of the Senator from Maine is withdrawn.

Mr. BLAINE. I now add the proviso because I want it to come in in a different part of the section. I offer it now to come in at the end of section 12 of the bill. I do this out of deference and respect to the Senator from Vermont, who thought there were some very valuable things in that section; and I am always anxious to oblige the Senator from Vermont. I move to amend section 12 by adding thereto the following:

But so long as said Central Pacific and Union Pacific Railroad Companies shall faithfully comply with the provisions of the said acts of 1862 and 1864 and of this act relating to payments to the United States on account of the bonds advanced, and of the sinking funds to be established as aforesaid, such compliance shall be deemed and taken as sufficient to meet the obligations of said companies on account of such bonds prior to the maturity thereof: *Provided*, That the annual payments from each railroad company, in addition to the half-transportation account and the 5 per cent. of net earnings presently applicable to the interest and the bonds, shall never be less than $600,000, including the other half of the transportation account applicable to the sinking fund herein established; and that nothing in this act shall be construed to waive any claim of the United States against either of said railroad companies, from whatever source arising.

I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. SAULSBURY. I simply want to inquire of the Senator from Maine if the meaning of that amendment is that payment of what is here called for shall be a compliance with the obligation of the company to the Government.

Mr. BLAINE. Certainly.

Mr. SAULSBURY. I understood from the Senator from Ohio that it would not be sufficient to meet the obligation of the companies to the Government; that there would be some $20,000,000 or $30,000,000

besides that would not be provided for. Now, will not this be an abatement of the claim of the Government against the companies to that extent?

Mr. BLAINE. This expressly excludes that conclusion, for it says "until the maturity of the bonds." It is limited to that. It only provides until the maturity of the bonds. It is the calculation of the Senator from Ohio who has charge of the bill that there will be only $35,000,000 left due from both roads. I stated it at $20,000,000 for each, but the Senator corrected me and said $35,000,000 for both. It will be, as compared with the value of the security the Government holds, a mere pittance.

Mr. THURMAN. The Senator from Nebraska [Mr. PADDOCK] intimated a desire to speak. Is he prepared to go on now?

Mr. PADDOCK. I expressed a preference not to go on to-night.

Mr. THURMAN. I cannot hear what the Senator says. I only want to give way if he desires the floor.

Mr. PADDOCK. I should like to inquire if there is any requirement of courtesy or precedence that would make it necessary for me to proceed now?

Mr. THURMAN. It is a matter of courtesy.

Mr. EDMUNDS. The gentleman in charge of a bill is generally allowed the last word.

Mr. THURMAN. Will the Senator from Nebraska please repeat what he said; I did not hear a word of it?

Mr. PADDOCK. Mr. President, if I should conclude to make a remark after the Senator ceases, I think it would be proper enough that I should do so, and allow him to conclude afterward. I do not think I shall say anything that will interfere with his arrangements.

Mr. THURMAN. I said to the Senator, but I am afraid I was not heard, there is so much conversation in the Chamber, that if he desired to speak now I did not want to take the floor. I give him precedence if he desires to speak now. I do not want to say anything until after he shall have concluded.

Mr. PADDOCK. The Senator is very kind, indeed. I acknowledge his courtesy. I desire that the debate shall be postponed until to-morrow. I think no delay, so far as the final result is concerned, will come from that postponement. I am not exactly in a condition to proceed to-night. Therefore I am content to waive the precedence that my friend is willing to accord to me, and, so far as I am concerned, if it is agreeable to the Senate, to sit and listen to the Senator. If I may have any remark to make afterward I will make it. Then, if the Senator wishes to conclude the debate, as it is his right to do, I certainly shall have no objection.

Mr. INGALLS. Before the Senator from Ohio proceeds, I wish to address to him a single interrogatory to which I shall not ask an immediate reply, but shall be contented if he answers it before he closes the debate.

The amendment offered by the Senator from Maine seemed to me to be so reasonable, so equitable, and so just, that I have been at a loss to understand why it was opposed with so much vigor and strenuousness by the Committee on the Judiciary. They having the full power to submit a proposition for the consideration of the Senate, it seemed to me that it ought to be one which would command the assent of all those who favored an adjustment of this long outstanding litigation. In the course of the remarks made this afternoon by the Senator from Indiana [Mr. VOORHEES] this same idea was brought before the Senate, and he addressed an interrogatory to the Senator

from Ohio asking him if this bill was not what the Government desired to enforce against these companies, what would content them, and if any measure could be devised that would be a final settlement satisfactory to both the Judiciary Committee and to the Government, why it was not presented. The answer made by the Senator from Ohio was in my mind the most significant statement that has been made during this whole debate. He said the reason why a different and more strenuous measure was not presented was because he could not get it through the Senate.

Now, I desire the Senator from Ohio to answer before he gets through his remarks what measure would be satisfactory to him if he could get it through the Senate, and whether or not that statement was not a direct intimation that whenever there is a Senate that he can handle or that any subsequent Judiciary Committee can handle, there is not an intention to renew this agitation for the purpose of imposing still further terms and exactions upon these corporations? If that is not the case, if that is not the intention and purpose of the refusal of the Senator from Ohio to accept this amendment, what did he mean by saying that the only reason why he did not propose a different measure was because he could not get it through the Senate?

Mr. THURMAN. Mr. President, after the intimation that has been made, that there will be speeches following what I have to say now, I shall not perhaps speak as fully as I might otherwise have been inclined to do.

Mr. VOORHEES. Will the Senator from Ohio allow me to understand the course of proceeding? I do not want to interfere with the debate at all, but to inquire whether the debate is to be closed this evening or not?

Mr. THURMAN. I hope so.

Mr. VOORHEES. After what the Senator from Nebraska [Mr. PADDOCK] said and the concession that the Senator from Ohio appears to be making now, it does not seem clear whether we are to remain here to close this debate, or whether we are to concede what the Senator from Nebraska asks, that it go over until to-morrow. The Senator from Ohio seems to be proceeding to make the closing argument somewhat out of order. That is what confuses me and prompts me to make the inquiry.

Mr. THURMAN. I am compelled to speak now because nobody else will speak and save me the trouble. I wish somebody else would, for I have no desire to make a speech if anybody else will. I said yesterday that I would ask the Senate to-day to sit this bill out.

Mr. VOORHEES. Of course we all understand that the Senator from Ohio will close the debate; but after the request the Senator from Nebraska made for a postponement of the subject until to-morrow, and inasmuch as the Senator from Ohio has not definitely answered the request of the Senator from Nebraska, I beg leave to ask whether the Senator from Ohio is going to ask for a sitting to-night.

Mr. THURMAN. Certainly, I want to sit the bill out to-night.

Mr. President, I shall speak, even as briefly as I shall, under great disadvantages, and I must crave the attention of the Senate to what I may have to say, in order that I may avoid repetition, and may thereby shorten the time of my speech and weary them and myself the less. I say I speak under great disadvantages.

Mr. FERRY. May I make a suggestion to the Senator from Ohio? He seems to be a little embarrassed in dividing his speech in two. I

voted to adjourn just now. I did so because one or two Senators had expressed their desire to speak upon this question, and were not prepared to speak. The Senator from Nebraska has expressed as much, and it has always been the courtesy of the Senator to yield to any such intimation. I therefore appeal to the Senator from Ohio to allow this question to go over until to-morrow. ["No!" "No!"]

Mr. SPENCER. Let us have an understanding at what hour we shall commence to vote.

Mr. FERRY. The Senator from Nebraska has not spoken upon this question. I do not desire to speak. I am not speaking in my own behalf, but I am speaking in behalf of the Senator from Nebraska and in behalf of any other Senator who rises upon this floor and states that he desires to speak to a question, but is not prepared to speak—not simply not prepared to speak, but not in a condition to speak to-night; and, it seems to me, the courtesy of the Senate ought to be extended to him as it would to any other Senator. For that purpose I move that the Senate adjourn, in order to test the Senate on that question.

Mr. THURMAN. I did not know that I yielded the floor to the Senator to do that.

Mr. FERRY. If the Senator is as technical as that, be it so. I asked him to yield to me to make a suggestion. I made the suggestion, and followed it up with a motion to adjourn. If the Senator states that he did not yield for that purpose, I will not take any advantage.

Mr. THURMAN. I certainly never so expected that the Senator would do such a thing.

Mr. FERRY. Very well, I do not make the motion.

Mr. THURMAN. Mr. President, I shall speak under very great difficulties. In the first place, I speak to a body fatigued by a long session; in the second place, I speak to Senators who are perhaps thinking much more of food for the stomach than food for the head. It was a remark long ago made by Cardinal de Retz, speaking of the old French Parliament, that he never knew any man eloquent enough to hold that body in session when dinner-time had arrived. That time has now arrived, and I should not be in the least surprised to find myself in a short time speaking—if it were not for a commendable habit that I have of being reasonably brief—to empty seats. I certainly should be in that category if I were to speak long, and therefore I shall try to speak briefly so that I may have some auditors at least until I shall have done.

Now, Mr. President, the pending question before the Senate is the amendment of the Senator from Maine, [Mr. BLAINE.] I have said once, or perhaps twice, that this bill is not framed upon the idea contained in that amendment. That amendment goes upon the idea that we ought to make an act that shall be unchangeable for twenty years; that we should assume in this year of grace, 1878, to be able to frame a law which shall require no alteration, no amendment in the course of twenty years. It goes further than that, a great way further than that. It goes upon the idea of repealing *pro tanto* the reserved power in these charters to alter, amend, or repeal those acts.

Mr. President, one of the things for which these railroad companies have been striving these many long years has been to get rid of that very reserved power; but this is the first time that they have ventured—no, not they; I beg pardon for saying that—this is the first time that any one in the Senate of the United States or, I believe, in the House of Representatives, has ventured to champion such an idea.

Their officers and lawyers, in their arguments before the Judiciary Committee last November and December, urged upon us strenuously enough that we should make some kind of bargain with the companies, and they would be extremely liberal if we would only give up the right to alter, amend, or repeal their charters. Those arguments, taken in short-hand, will show that it is the cherished object of these corporations to get rid of that power of control which Congress possesses over them. They would give for that far more than the Senator from Maine asks from them. They would give far more than the Judiciary Committee bill asks from them, upon any interpretation, if Congress would surrender that power to alter, amend, or repeal. That, therefore, is involved in the amendment which is now under consideration. Congress, for good and sufficient reasons, I am willing to admit for the purposes of this argument, saw fit in 1862 to pass an act chartering railroad companies whose roads should extend over one-half of this continent, and chartering them in perpetuity, chartering them with an existence that should endure as long as the Republic itself should endure, chartering them with powers such as never were conferred on any other railroad corporations on the face of this globe, endowing them as no other corporations ever were endowed. And then, in 1864, it saw fit to nearly double the endowment, and to increase their powers and their privileges immensely beyond what they had been before. But in view of that fact, in view of the immense power and extent and wealth that these corporations would have, in view of the fact which human experience has shown and nowhere more than in the United States, the power of concentrated capital, wielded in the employment of thousands and tens of thousands of men, the Congress wisely retained the power to alter, add to, amend, or repeal those charters. It did it for the very purpose for which such reservations are made, in the language of the Supreme Court of the United States. It did it because, in the language of that court—

> The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest—

Not the private interest of these corporations, as my friend from Connecticut [Mr. EATON] suggests, but against their interest if necessary and against their will—

> if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators.

That is the language of the Supreme Court, and that was the law of this land when the Congress of the United States in 1862 and again in 1864 said the Congress of the United States shall have control over this contract with these corporations. And now, sir, it is to get rid of that control, to fritter it away, to overthrow and destroy it, to annihilate the very thing for which the people of this country for thirty years have been contending, and which they have put into nearly thirty constitutions of the States—it is to get rid of that, to trample it under foot, to render it a nullity, to construe it away, to make it not worth the paper on which the words are printed, that amendments like that now under consideration are offered, and arguments such as we have heard in the Senate are made.

Mr. President, I have said, and I repeat it, that, rather than see Congress give up that power of control over these two great corporations, I would see every dollar of the debt that they owe the Government lost forever. I would rather see this bill sunk into the depths of the sea, never to be resurrected, than to see Congress yield

for one day its power over these two corporations or any others over which it has the power. Why, sir, my friend from Connecticut [Mr. EATON] said this evening that no government could exist that asserted such a power as this. That is a strange assertion.

Mr. EATON. I did not say that.

Mr. THURMAN. What did you say?

Mr. EATON. I said that no government could exist among civilized men that would, without cause, exercise that power of repeal, and I say it again.

Mr. THURMAN. "That would without cause exercise it?"

Mr. EATON. Yes.

Mr. THURMAN. That is all very true; but then comes the question, what is cause?

Mr. EATON. There is none.

Mr. THURMAN. Oh! then comes the question what is the cause? The Senator makes the cause a default in the company. I make the cause the interest of the Republic. I say, in the language of the Supreme Court, that the words are there in order to give us control whenever the public interest, not the interest of these corporations, not the default of these corporations, but whenever the public interest shall require us to exercise it.

Mr. VOORHEES. May I——

Mr. THURMAN. No, let me go on. Ah, but the existence of such a power is inconsistent with civilized government, is it? Has not such a power existed in England ever since there was a Parliament? Has not England exercised it? Has not England compelled her monarchs to revoke the charters and monopolies they had granted, again and again? Has not the house of commons refused grants of money to carry on the government until those monopolies were destroyed? Ah! sir, is it not the law in nearly every State in this Union that the Legislature may alter, amend, or repeal the charters it grants? I think there is some civilization in England. I think there is some civilization in the United States. I think there is some civilization in my own State. I think, therefore, that the idea which seems to haunt some of our friends on this floor, that here is an assault on liberty, as if monopolists were the friends of liberty; that here is some attack on property, as though there could be an attack on property in exercising the rights which are plainly reserved to Congress in words as plain as can be found in any lexicon of any language, may be dismissed from consideration.

Mr. VOORHEES. I rise for the purpose of asking whether the Senator from Ohio declines to allow me to ask a question? If he does, I only want him to say so.

Mr. THURMAN. I do not know what the question is.

Mr. VOORHEES. Of course you do not; but I want to know whether the Senator, as he did a while ago, declines to allow me to propound it?

The PRESIDING OFFICER, (Mr. INGALLS in the chair.) Does the Senator from Ohio yield to the Senator from Indiana for the purpose of asking a question?

Mr. THURMAN. If it is pertinent to what I am saying now, I do.

Mr. VOORHEES. I presume I would not ask an impertinent question.

Mr. THURMAN. No, but everybody knows perfectly well——

Mr. VOORHEES. I yielded to the Senator to-day myself when I had a written speech.

Mr. THURMAN. Go on.

The PRESIDING OFFICER. The Senator from Ohio yields.

Mr. VOORHEES. All I desired to say in the way of a question was this: the Senator from Ohio announced with the utmost emphasis that sooner than yield this power, which he claims over these companies, he would sink and forfeit and lose all the pecuniary interests that are coming to this Government. I ask the Senator from Ohio whether, when the power has been asserted by Congress over these companies to the full extent that the Judiciary Committee thinks is proper to secure the Government in all its rights, and the companies comply with the demands thus made, and while they are thus complying, he thinks the power of the Government over them is abandoned? In other words, when the Government has made its claim of power and the companies are faithfully complying, whether, in his judgment as a lawyer, the power of the Government is not operating on them? In other words, I say that when we put forth a claim of power and assert it by legislative action, and these companies comply with and meet every demand we make, the amendment which the Senator from Maine offers, saying that while that is done we will make no new demand, does not release the power of Congress over these companies, but really asserts and continues it at the standard we now erect.

Mr. THURMAN. That is a brief question. I am delighted at its brevity.

Mr. VOORHEES. I hope it is pertinent.

Mr. THURMAN. I do not know but that it was; I will not quarrel with my friend about that, but I can answer it much more briefly than he stated it. If we were to pass a law saying to them "Pay us five cents in the dollar in installments of a cent a year on your indebtedness, and if you do that we will give up all the rest," the Senator might just as well say they were acting under the power of Congress. To be sure they would be acting under the power of Congress if we were to make such a bargain as that with them. We may do anything we please in that way, and we may say they are acting under the power of Congress, although it be to sponge out almost the whole of their indebtedness to the Government, and although it be to leave their creditors to the mercy of the men who are managing these great corporations, and who have in the past and who will in the future, if we do not interpose, manage them with an eye single to their own interest and not to that of the people to whom they owe so much.

Mr. VOORHEES. I am sure, however, this bill is not going to affect injuriously the debt they owe us.

Mr. THURMAN. No, this bill is not; but this bill was never framed on the idea of making a bargain with these companies for twenty years or any other number of years. If it had ever entered into the heads of the Judiciary Committee that we were to make a law unchangeable as one of the Medes and Persians for twenty years, I say to my friend from Indiana we should have reported a very different bill indeed. If we are to surrender for twenty years to these companies that power which we have over them in respect to their duties not simply to the Government, for the Judiciary Committee bill takes no more care of the Government than it does of any other creditor; if we are to surrender that power which Congress has to compel these companies so to administer their affairs as not to become bankrupt, so to administer their affairs as not to put their net earnings all in the pockets of their shareholders and leave their creditors without payment; if we are to surrender that power of control of administration, then I say we should require a much better bargain than this bill would make.

Why, Mr. President, let us see how this bill will operate. I have before me some calculations made by the chief of accounts of the Treasury Department, perhaps the best expert in Washington. He ought to be, for he is chief of accounts in the great money Department of the Government. I put this question to him:

Question 1. Taking "net earnings," as defined in section 1 of the Judiciary Committee bill, and establishing the 5 per cent. of net earnings and the half transportation account in the future as follows, namely, Union Pacific, $700,000 annually—

That is the 5 per cent. and the half transportation, payable to the Government under existing law—

and Central Pacific, $500,000 annually, together $1,200,000 annually, what additional sum would each company have to pay into the sinking fund to make a sum equal to 25 per cent. of its net earnings?

That was a proper question, because under our bill we propose no to take more than 25 per cent. of their net earnings, either for present payments under the law as it now exists or for a sinking fund. What answer does he make?

Answer. Taking the ordinary and regular net earnings of the two companies to be as follows, namely—

I will not read all the details, but he goes into the matter in detail—

the additional sum required from each company would therefore be $100,000 from the Union Pacific and $800,000 from the Central Pacific Company.

That is in addition to the half-transportation account which is put into the sinking fund, to which the companies are now entitled. That would make in the case of the Union Pacific, on an average of the last six years' business, a payment of $521,000 into the sinking fund, and for the Central Pacific a payment of about $1,000,000 into the sinking fund. The reason that the payment into the sinking fund by the Union Pacific is so much less than by the Central Pacific is that the transportation account over the Union Pacific is more than double what it is over the Central Pacific.

Mr. ALLISON. Allow me to ask a question right on that point. He says the sum is $100,000 for the Union Pacific.

Mr. THURMAN. On this basis, yes.

Mr. ALLISON. Would that make $800,000 for the Union Pacific? The half transportation is put in in addition.

Mr. THURMAN. Four hundred and twenty-one thousand dollars.

Mr. ALLISON. He makes this calculation on the same basis which would make a total payment of the sum of $521,000 on the part of the Union Pacific Railroad?

Mr. THURMAN. Exactly.

Mr. ALLISON. That is not enough.

Mr. THURMAN. I agree that it is not enough.

Mr. BLAINE. The calculation must be wrong.

Mr. THURMAN. I leave that to the Senator from Maine and to the chief of accounts of the Treasury Department to show whether it is wrong; but here are the figures.

Mr. BLAINE. There cannot be $700,000 difference between what should be estimated for one company and what should be estimated for the other, unless you can show a much larger difference between the half-transportation account of the companies than I have yet discovered. There is no $700,000 difference between the half-transportation accounts of the two companies.

Mr. THURMAN. Here are the figures, and the Senator can calculate for himself whether they are right or not. It is sufficient for my

purpose that here they are. I agree that would not be enough, and it would be an utter absurdity in us to tie up our hands for twenty years, and say that we will receive no more from the Union Pacific than about half a million of dollars a year into the sinking fund; and therefore I am totally opposed to the amendment of the Senator from Maine. What does he say? He is willing to raise it $100,000 more, and make it $600,000 instead of $500,000. I am totally unwilling to do that. He does not propose to raise it even that much because it is $521,000, and he would raise it to $600,000, $79,000 difference. Raising it $79,000 is the last tail to his amendment. It raises it $79,000. That is all there is in that tail. It raises it $79,000 in regard to the Union Pacific, and as to the Central Pacific it does not raise it a dollar. So all the great benefit of that proviso to the amendment of the Senator from Maine is to make an increase of the amount which the Union Pacific road shall pay into the sinking fund of $79,000 a year, in case its net earnings and half-transportation account should in the future be the average of what they have been for the last six years. That will not do at all.

I have said that this estimate is upon the basis of $1,200,000 a year as the sum of the 5 per cent. and the half transportation. The Judiciary Committee estimated it at $1,166,000; I take $1,200,000 as a round sum; but the committee said in its report that in their opinion the amount would be much larger, that both the 5 per cent. and the half transportation would be much larger, but they could not undertake to estimate it. Now, this chief of accounts has undertaken to estimate it by considering the increase of the net earnings and the half transportation ever since these roads were opened, and making the calculation in that way—that is, ascertaining the rate of increase in the past and assuming the same rate in the future—he comes to the conclusion that, upon the basis of what is likely to be the increased business of these two companies, the increased half transportation and the increased net earnings upon which we should get 5 per cent., that additional sum which each company would have to pay into the sinking fund under the Judiciary Committee bill to make a sum equal to 25 per cent. of its net earnings so defined would be, for the Union Pacific $573,216 and for the Central Pacific $1,465,730.

But you will remember that our bill contains a further limit that that shall not exceed $1,200,000 in the case of the Central Pacific. Therefore, on the estimate of what will be the business based on the rate of increase of business in the past, the calculation to be made for the Union Pacific would be $573,000 and for the Central Pacific $1,200,000. To this amount thus payable by the Union Pacific you have to add the half transportation, which would bring it up to a million of dollars at the least annually to be paid by that company into the sinking fund, and the amount to be paid annually by the Central Pacific would perhaps reach the sum of a million and a half of dollars. That is likely to be the effect of this bill if it should pass, and the result of it in the outcome upon the debt would be as follows:

At the maturity of the debt the companies will still owe under present laws, that is if they should not be changed, according to the best estimate that can be made of the product of the 5 per cent. and the product of the half transportation, $109,000,000. The estimate of the Judiciary Committee was $120,000,000, and of the Railroad Committee $122,000,000. The chief of accounts estimated it at $109,000,000, because, as I have said, he estimates the 5 per cent. of net earnings and the half-transportation account higher than the estimate of the committees under the Judiciary Committee bill, upon the com-

mittee's estimate of $1,166,000, or in round numbers $1,200,000, as the amount of the 5 per cent. and the half transportation, the sum that would be due to the Government at the maturity of the bonds, the average time of which is October 1, 1897, would be $75,000,000. That is what the two companies would owe to the Government at that time upon the estimate made by the Judiciary Committee of the 5 per cent. and of the half transportation, if the bill should pass; but upon the estimate made by this expert, this chief of accounts, allowing for the increased business in the future at the ratio at which it has increased in the past, or something like that, the amount that would remain due would be $36,000,000. Under Senate bill No. 812, the bill of the Railroad Committee, the Government would sponge out fifty-three million and odd, losing that by mere computation of interest, and the companies would still owe at the maturity of the bonds $67,000,000.

Mr. President, it seems to me that this statement of itself shows that this is not a subject upon which the hands of Congress ought to be tied, so that, no matter what may be the consequences in the future, no matter how these companies may mismanage their affairs, no matter, on the other hand, how prosperous they may be, we shall be so tied up that we can do nothing for the protection of their creditors.

Mr. ALLISON. What shall I understand is the amount due on the basis of the Judiciary Committee bill?

Mr. THURMAN. The Judiciary Committee made an estimate that the half transportation and the 5 per cent. would amount to $1,166,000 annually for the two companies, which I put in round numbers at $1,200,000. Upon that basis the amount, if the Judiciary Committee bill should be passed, which would remain due at the maturity of the bonds, would be $75,000,000; but upon the basis of $1,700,000, which is the calculation this expert makes as the average of the 5 per cent. and the half transportation in the future for twenty years, the debt would be reduced to $36,000,000. It grows out of the difference between the estimated amount of that which is presently payable and also the very different amounts which go into the sinking fund. For instance, if the Judiciary Committee's calculation is correct, there would only be $100,000 in addition to the half transportation to go into the sinking fund for the Union Pacific. If this expert's calculation is correct of the business of the future, there will be $573,000.

Mr. ALLISON. As I stated, I took the report of the Judiciary Committee and had estimates made beginning from the issuance of these bonds to their maturity; and estimating for the 5 per cent. and the half transportation at $650,000, the sum of $800,000 per annum will liquidate the entire interest of the Union Pacific, and a million of dollars the interest and only the interest of the Central Pacific.

Mr. THURMAN. I can show the Senator I think in a moment that that calculation can hardly be exactly right, because on the committee basis the estimate of what is to be paid and is presently applicable, with the amount which the companies are to pay in addition to that and with interest upon it, would not more than meet the interest on the Government loan. Indeed, it would fall short of doing that. But upon the basis of the chief of accounts the interest would be repaid and nearly twenty millions of the principal.

Mr. MITCHELL. I should like to ask the Senator a question for information. Upon what basis does he make the estimate of the half-transportation account and the 5 per cent. on its actual amount in the past year?

Mr. THURMAN. I have said several times—I am sorry my friend did not hear me—that it is on an average of six years past in respect to one of the companies and four years in regard to the other.

Mr. MITCHELL. But the estimate made by the expert in the Treasury Department is on an estimate of what these items probably will be in the future.

Mr. THURMAN. Yes; and estimating the increase already, and making a very moderate estimate, too, he says that, in his judgment—and I am inclined to think he is right—the 5 per cent. of net earnings and the half transportation, instead of being $1,200,000, as the Judiciary Committee estimate, will be about $1,700,000, a half million more, and I think he is right. As I said before, these roads are only in their infancy; every year they will be tapped by new roads, branch roads, some constructed by themselves, others constructed by others. Every one of these branch roads brings business; it is all grist to their mill; and as to rival roads, they are in no danger from rival roads for twenty years to come. Rival roads do not succeed very well. If the Southern Pacific, for instance, were completed, owned by the very same men who own the Central Pacific, I should like to know where the rivalry would be. I should like to see rivalry there. But where is to be the rival of the Union Pacific? It will have none; certainly none if my friend from Oregon shall get a branch road built from Portland to the Union Pacific, and thus kill the Northern Pacific stone-dead for many a long year. Then the Union Pacific will not have much trouble.

Mr. MITCHELL. Suppose your friend from Oregon should succeed, in connection with his colleague and others, in getting the Northern Pacific through, what then?

Mr. THURMAN. If he should get the Northern Pacific through, it is so many hundred miles away from the Union Pacific that I do not think it will be much of a rival to the latter or do it much harm.

Mr. President, I have but a few words more to say in answer to some things that have been said, and then I will not delay the Senate longer. I do not propose to argue the question of the power of Congress at length any more. I have not argued it at much length heretofore. If the report of the Judiciary Committee, if the speeches that have been made in support of that power are not sufficient to convince a Senator, nothing can, though one should rise from the dead. I have only to repeat one point that I made last Thursday. The reservation of a power to alter, amend, or repeal, makes it impossible that the exercise of that power can be the violation of a contract, can be the impairment of a contract. It is a simple impossibility, for what you do the contract itself says that you may do, and, therefore, you cannot impair the obligation of the contract by doing that very thing which the contract authorizes.

Mr. BLAINE. Is there no limit?

Mr. THURMAN. Yes, there are limits. There are certain limits in the Constitution of the United States. You shall not take private property for public use without making just compensation. Nobody pretends that you can do that under any power to alter, amend, or repeal a charter. There are a great many other things. You shall not commit murder, and you cannot do that under the power reserved.

Mr. MITCHELL. If the reservation is part of the contract, thereby enabling Congress to interfere by amendment, can Congress or can it not, under the theory of the honorable Senator, provide by law, by an amendment to the charter, that this interest, which is not required to be paid until the maturity of the bonds, shall be paid to the Gov-

ernment semi-annually from the present time? On the theory of the honorable Senator does not that follow inevitably?

Mr. THURMAN. It does not follow inevitably at all.

Mr. MITCHELL. Why?

Mr. THURMAN. And yet I will not say that Congress might not do that very thing. I know very well that our friend from Georgia [Mr. HILL] has said several times—I think I have heard it several times—that this contract of loan is a sort of side-show, that you can do anything you please with everything in the world but this contract of loan. As I understand my friend from Connecticut, [Mr. EATON,] you cannot touch the franchises any more than you can touch the contract of loan. He goes the whole figure. The Senator from Georgia says, "Oh, yes, you can do all you please with the franchises, whatever you please with them, but you shall not touch my little offspring out here that is called a loan." I should like the Senator from Georgia, who is a strict constructionist, to find in the Constitution of the United States any power of the Government of the United States to turn out and be a common money-lender, for that is the ground on which he puts it. I grant the United States can provide for a loan of money out of the Treasury, but it must be in the exercise of some power that is conferred upon Congress. Congress, for instance, has a right to build light-houses; it has a right to build forts; it has a right to build ships; it has power to declare war and make peace. In the exercise of any one of these powers it might be necessary to lend money in order to help a party to build a road or a fort, to build a ship of war, to build an arsenal, to cast cannon, or make fire-arms, or the like; and when it is in the power of Congress to make a loan, which it must derive under the military power, or the post-office power, or some other like power, or it does not possess it at all; when it has that power, then, in furtherance of that object and in the exercise of the power it may make a loan of money to the corporation that it charters to build a road; but that is not a separate thing from the charter; that is one of the considerations on which the company agree to take the charter. Who knows that this company ever would have accepted this charter and gone to work under it if Congress had not agreed to make this loan? It is one of the considerations that Congress held out to them to do the business. It was not simply the repayment of the money that was expected; not at all; but it was the advantage of a thirty years' loan not reimbursable principal or interest until the end of the thirty years, in order that the roads might be built. That was one of the considerations that Congress held out to them, and that was one of the considerations they had a right to insist upon.

Mr. MATTHEWS. Will my colleague allow me to interrupt him for a moment?

Mr. THURMAN. Certainly.

Mr. MATTHEWS. If my colleague is right, I should like him to answer why then we cannot change the terms of that thirty-year loan and make it a loan due presently, the entire principal; and why also we cannot change the law of 1864 so as to restore to the United States its priority of lien in reference to that loan as against those who claim under the act of 1864?

Mr. THURMAN. The last part of that question astonishes me. We cannot destroy the vested right of the first-mortgage bondholders to their lien any more than we can take away the right to my house and give it to my colleague, or his house and give it to me. The Constitution of the United States contains no delegation of power to do

any such thing as that; nor is there any reservation here that pretends to such a right as that. And as to the question of whether or not we could make this interest payable *in præsenti* to the Government, I have already said to the Senator from Oregon that I was not prepared to say we could not.

Mr. MATTHEWS. I did not say the interest; the principal, not the interest. Why not make the whole loan payable?

Mr. THURMAN. What difference does it make?

Mr. MATTHEWS. It does not make any in my judgment.

Mr. THURMAN. I said the other day, and I repeat it, I shall not stand up here to argue hypothetical cases; I shall not stand up here to argue what is not in this bill. When we propose to make that principal payable presently, or when we propose to make that interest reimbursable presently, it will be time enough for us to discuss that question; but there is not one word in this bill that does any such thing.

The Senator from Connecticut said he would show that this bill impaired the obligation of a contract, and he gave a great string of general principles. I do not know whether they were right or wrong, for when I heard of "general principles" I did not pay the attention I am accustomed to pay to whatever he says; but I listened in vain for him to show one particular in which this bill impaired the obligation of any contract whatever, unless indeed what he said in the close of his speech meant that there was an impairment of a contract, and that was that to require them to put some money into a sinking fund, instead of putting it into their own pockets, was impairing the obligation of a contract. There I must differ with my friend. I find no impairment of the obligation of a contract in any such thing as that.

Mr. PADDOCK. The Senator will allow me——

Mr. THURMAN. Not at this moment. I could pile these desks, not mountain-high but a great deal higher than the Senate would like to see them, with instances of legislation of precisely the character in principle of that which requires these sinking funds to be created.

While my friend from Connecticut was speaking, it just occurred to me to look at the national-bank act and see what Congress has done under this reserved power to alter, amend, or repeal in that case, and I will take only a few instances and not the most striking, for I have not time to do it. Let us see. Remember that the banking act contains the reserved right to alter, amend, or repeal. A certain limit to the amount of national-bank notes was fixed by the original act, the act of February 25, 1863, and the act of June 3, 1864. Under these acts the banks had a right to so many circulating notes. What did Congress do of its own mere power and will on the 12th day of July, 1870? It cut those notes down to $354,000,000; said they should not exceed that amount, although in order to get them down to that amount the banks had to retire notes which, under the law as it stood before, they had a perfect right to issue and use for their own profit.

Again, there was a distribution of that currency under the act of 1863, the bank charter. Under that distribution it was said that some States got much more than a fair share of it, especially the New England States, particularly Massachusetts, and I believe the State of Connecticut and others. What did Congress do in 1870? It declared in the act of the 12th of July, 1870—

That to secure a more equitable distribution of the national-banking currency there may be issued circulating notes to banking associations organized in States

and Territories having less than their proportion as herein set forth. And the amount of circulation in this section authorized shall, under the direction of the Secretary of the Treasury, as it may be required for this purpose, be withdrawn, as herein provided, from banking associations organized in States having a circulation exceeding that provided for by the act entitled "An act to amend an act entitled 'An act to provide for a national-banking currency secured by pledge of United States bonds, and to provide for the circulation and redemption thereof,'" approved March 3, 1865, but the amount so withdrawn shall not exceed $25,000,000.

There under the express provisions of the charter the banks in New England and New York—for I believe it only touched the New England States, and perhaps only two or three of them, and New York—were compelled to give up twenty-five millions of their currency to which they had a perfect right under the law as it then stood, and until Congress altered it, and Congress did not ask the consent of the banks at all; it exercised the power of taking those notes away from those corporations under the reserved power to alter, amend, or repeal.

But, sir, that is not all. Look at an act passed on the 19th of February, 1869, which declared—

That no national-banking association shall hereafter offer or receive United States notes or national-bank notes as security or as collateral security for any loan of money, or for a consideration shall agree to withhold the same from use, or shall offer or receive the custody or promise of custody of such notes as security, or as collateral security, or consideration for any loan of money.

Then it makes it a penal offense. Before the passage of that act it was perfectly lawful to do that thing; it was one of the chartered rights of the companies to do that thing. Every one of them had that right, and the very best kind of security would be these very notes; yet Congress came in and in the exercise of its legislative power, without asking the consent of the corporations, said "You shall no longer exercise this right, and, if you attempt to do it, it shall be a misdemeanor and you shall be punished criminally."

I might read many more alterations that have been made, but it is unnecessary to take up the time of the Senate in doing it. There is one great alteration in the reserves which these banks are to keep. We compelled them at one time to put 5 per cent. of their circulation into the Treasury of the United States as a security and we prescribed what reserves they shall keep; and all this is done under the reserved right to alter, amend, or repeal. Done why? Done to secure the public, done to secure their creditors, done not because the banks assented to it, done not for their interest, done not for their pleasure, done not with their assent, but done in despite of them, because the public good required it and the duty of the Government to protect their creditors required it.

Now, Mr. President, a few words more and I will relieve the Senate from anything further. I do not understand how Senators on this floor who think the Judiciary Committee bill an unconstitutional, an unjust, or an impolitic measure, can vote for the amendment of the Senator from Maine. It is argued here that this is an unconstitutional measure; it is argued that it is one which shocks the moral sense, violates the Constitution, endangers liberty, makes the hair of every strict constructionist stand on end, if he has any hair on the top of his head, [laughter,] makes it bristle "like quills upon the fretful porcupine." All this, and yet the same gentlemen who argue that way say "Let us make this law like a law of the Medes and Persians, unchangeable for twenty years." The worse the law is the longer shall be its duration, the more unconstitutional it is the firmer shall it be fixed upon the country! Well, Mr. President, that is a kind of reasoning I do not comprehend. I can understand how

and they might be better able to indemnify the Government and save their creditors, or on the other hand, no matter what might be their misconduct, our hands will be tied. I was speaking of the debt; but I do not presume to follow it out to its consequences, as the Senator from Vermont did this morning; but I do say that every word that the Senator from Vermont said as to the scope and effect of the amendment, if it were adopted, is worthy of the most serious consideration of the Senate.

Mr. BLAINE. Then the Senator limits his remark to that. Now, another thing. When the Senator went on to describe with minuteness just how this amendment would operate he failed, as I think, to keep his argument on all fours, because after he had given the table from the expert in the Treasury Department showing that there would be $36,000,000 left at the maturity of the bonds from both roads he went on to say, "but we all underrate the immense development of these roads." He gives it as his opinion that the development would far outrun any of the calculations submitted. I agree with him. I think so myself. I think his bill takes a sliding scale of 25 per cent. of the net earnings that will far more than pay the debt to the Government within the time. All the arguments I have made heretofore have been based upon taking the Senator's own calculation and his own figures. As I had no time myself to make any calculations, I was compelled to take those of the Judiciary Committee, and I was very willing to do so, because I supposed they had been made with care. But the Senator takes occasion himself to assure us, after those calculations were given in the last remarks he made, that the development of this road, still in its very infancy he says, is to be so enormous that it will far outrun any calculation made upon it. I should like to propound this query to the Senator: Suppose that you could lay down to-day exactly this ground, that this company shall pay every year enough to absorb the interest and part of the principal and that right along from now for the next twenty years there should be enough paid every year to wipe out the entire debt before its maturity; would the Senator agree to make that conclusive and final *quoad* the pecuniary obligation of the road?

Mr. THURMAN. I tell the Senator I would not agree under any circumstances to suspend the power of Congress over these corporations for one day, and if he would make the amount to be paid into the sinking fund $5,000,000 a year, or $10,000,000 a year, I would not agree to surrender the power of Congress.

Mr. BLAINE. Not over the debt?

Mr. THURMAN. No, not over anything.

Mr. BLAINE. Then I ask the Senator if these railway companies would bring all the money here to-morrow that is owed to the Government and offer it in payment, would he still insist on the power?

Mr. THURMAN. Certainly. We are talking of the roads.

Mr. BLAINE. Over the debt. I was speaking solely of the debt. The Senator says that if they would agree to pay $10,000,000 a year he would not make a conclusive bargain as respects the debt. It seems to me that weakens if it does not destroy the whole position of the Senator. It does seem to me, with entire respect for the Senator, that he has seemed to place himself in the position of the man in the story who was so contrary that he would not allow himself to do as he had a mind to. The Senator said if the companies would come here and offer $10,000,000 a year he would not put a provision in and say "We will not legislate on that, as conclusive on the debt; we will not agree that we will not demand $11,000,000 next year." That is

the spirit of this legislation. That is the whole spirit of the Senato[illegible]r from Ohio. He brings in a bill here, elaborately studied, thoroughl[illegible]y prepared. He demonstrates to us that its provisions will pay th[illegible]e debt within the time. Nay more, he says to us the roads are in thei[illegible]r very infancy, they will outrun this far and far beyond. Then I sa[illegible]y to the Senator do not let us have these railroads here perpetually i[illegible]n Congress. Do not let us invite the presence of the lobby which s[illegible]o disturbs the dreams of the Senator from Vermont. Let us say to th[illegible]e railroad companies that if you will do this which will in good faith[illegible]h pay the debt it shall be final on that point. The Senator from Ohi[illegible]io declares that there is no case where he will make such a conclusion[illegible]n. Lest I should have possibly misunderstood him in the original argu[illegible]n-ment, he tells us now that if the railway companies come here an[illegible]nd offer to pay $10,000,000 a year he would not agree to accept the offe[illegible]er as final and conclusive respecting the debt; he would not agree tha[illegible]at we should not immediately demand $11,000,000 per annum from th[illegible]he companies, though $10,000,000 per annum would pay the entire debt [illegible]at least twelve years before it is due.

Such, then, is the spirit in which this measure is offered, and whe[illegible]en they have prepared it and we were willing to make it a finality if th[illegible]he companies will obey it and faithfully comply with it, the Senator fro[illegible]m Ohio says no. It seems to me that the Senator puts himself in the att[illegible]ti-tude of simply not being willing to make any offer that he thinks th[illegible]he companies would agree to and live under. A Senator [Mr. GORDON[illegible]N] suggests that I should address the Senator from Ohio a question as t[illegible]to whether $20,000,000 a year would satisfy him. It would not of cours[illegible]e, because that would take away the immense privilege of punching an[illegible]nd worrying the railroad companies next year. Would the Senator fro[illegible]m Ohio give up the precious privilege of punching, and knocking, an[illegible]nd harrying, and pounding, and twisting a railroad for the pittance o[illegible]of $20,000,000 a year to be paid into the Treasury of the United States[illegible]s? Not he! The Senator says he would rather lose it all, he would rathe[illegible]er lose every dollar of the debt, he would rather bury it in the depth[illegible]hs of the sea, than surrender the power of overhauling these railroad[illegible]ds for a single year. And yet the Senator told us only five years ago o[illegible]on this floor that there ought to be an end to "this tampering" with th[illegible]he subject! Let us stop, said he then, and not leave this thing at "loos[illegible]se ends," let us have a finality with this question, let us have no stock[illegible]k-gamblers here investing nine cents on the legislation of Congres[illegible]ss about the railroads to make twenty-one cents clear profit: ther[illegible]re should be an end to all "tampering" of that kind, the Senator declare[illegible]ed but five short years ago.

And now the Senator declares that what he said then does not appl[illegible]ly to this proposition, but that if the railway companies would com[illegible]me here and offer twenty millions on the top of it he would not forego[illegible]go the pleasure of punching the railroad through legislative channels[illegible]ls, allowing anybody to speculate if they chose! That is the intend[illegible]d-ment and the inference to be derived from the Senator's proposition[illegible]on. That is consistent legislation! We who offer to take the Judiciary[illegible]ary Committee at its word are accused of being willing to give over th[illegible]he powers of this Government. When the Senator from Vermont ha[illegible]ad pictured a tremendous disaster, a catastrophe in the shape of [illegible]a destruction of the securities of the road, a default of all the bonds[illegible]ls, and finally the first mortgage in peril and our hands were thereb[illegible]by tied, I simply made an amendment and provided after they had pai[illegible]id all that was due under the 5 per cent. and all that was due under th[illegible]he half transportation that there should also be a minimum of $600,00[illegible]0

per annum from each company. Then the Senator said in answer to the Senator from Iowa, I believe, that I had put too hard a condition on the roads. First, I was going to allow it to go without any sort of security, and when I make it perfectly apparent that it could not be so, he says that I place too hard a condition on the roads. Now, I have come to the conclusion that so far as my humble ability lies I have not the power either to please the Senator from Ohio or the Senator from Vermont, for I would not vote for twenty millions a year. Even that would not please me, and I could not vote for it to please them.

I say with all due respect, Mr. President, that if this legislation be intended in good faith, from my stand-point, if it be intended that these roads shall go about their business and quit the lobby and discharge their duties and pay their debt to the Government and to their other creditors, the way to do it is to say that they shall not be disturbed so long as they "faithfully comply" with the terms and conditions laid down by us. This gigantic railway company is a pet corporation. What would Senators find in the whole legislation of the United States to dwell on as to the overshadowing danger and monopoly of corporations if it were not for the Union Pacific Railroad? I asked yesterday if there was another in the whole United States? I asked the honorable Senator from Vermont, whose knowledge is so minute of all laws, public and private statute and common and civic and criminal and ecclesiastical, and he has not told me what other corporation we could vent our spleen upon; that we could air our vocabulary upon. What other one is there that can be trotted out here as the specimen monopoly if we let go this company? If we let go this company on their simply paying their honest debts, we will be as bad as the young man in London who succeeded to his father's chancery practice, and when the father asked the son about the famous case of Smith *vs.* Jones the son said, "I settled that yesterday amicably and fairly to both parties." "Oh! you young blockhead," said he, "I have lived on that suit for the last twenty years." It is proposed to make capital of the agitation of this railroad case for the next twenty years. This is to be an agitation always handy for political purposes, always to be drawn on and always to be dragged in and to the extent that the Senator from Ohio himself says that he would not give up that precious privilege if they would offer to pay $10,000,000 per annum to the Treasury of the United States.

The PRESIDING OFFICER, (Mr. INGALLS in the chair.) The question is on the amendment proposed by the Senator from Maine, [Mr. BLAINE,] on which the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. CAMERON, of Pennsylvania, (when his name was called.) On this question I am paired with the Senator from New York, [Mr. CONKLING.] If he were here, he would vote "yea" and I would vote "nay."

Mr. EDMUNDS, (when the name of Mr. CAMERON, of Wisconsin, was called.) The Senator from Wisconsin [Mr. CAMERON] and the Senator from Minnesota [Mr. MCMILLAN] are paired upon the present question. The Senator from Minnesota would vote against the amendment and the Senator from Wisconsin would vote "yea," as I am informed.

Mr. CHAFFEE, (when his name was called.) On this question I am paired with the Senator from Vermont, [Mr. MORRILL.] If he were here, I should vote "yea" and he would vote "nay."

Mr. DAWES, (when his name was called.) I am paired upon this

bill with my colleague, [Mr. HOAR,] who is necessarily absent from the city. I do not know exactly whether he would vote on this amendment with the Senator from Vermont [Mr. EDMUNDS] and the Senator from Ohio, [Mr. THURMAN,] but to be on the safe side I decline to vote. I should vote "yea" if he were here.

Mr. EUSTIS, (when his name was called.) On this amendment only I am paired with the Senator from Maine, [Mr. HAMLIN.] If he were present, he would vote "yea" and I should vote "nay."

Mr. HARRIS, (when his name was called.) Upon this amendment I am paired with the Senator from Arkansas, [Mr. DORSEY.] If he were present, he would vote "yea" and I should vote "nay."

Mr. HOWE, (when his name was called.) On this question I am paired with the Senator from Nevada, [Mr. JONES,] who, if here, would vote for the amendment and I should vote against it.

Mr. JOHNSTON, (when the name of Mr. WITHERS was called.) I desire to announce that my colleague [Mr. WITHERS] has been detained at home. He is confined to his room. I understand that he is paired with the Senator from Kansas, [Mr. INGALLS,] but that the pair with the Senator from Kansas does not apply to the amendments to the bill, but only applies to the final vote on the bill.

The Secretary concluded the call of the roll.

Mr. TELLER. I desire to say that on the final vote I am paired with the Senator from Iowa, [Mr. KIRKWOOD.] I am not paired on any amendment and I vote "yea."

Mr. EDMUNDS. The Senator from Colorado [Mr. TELLER] announces a pair with the Senator from Iowa [Mr. KIRKWOOD] who is absent on public business as I understand, on the main question but not on amendments. I feel authorized to say, although not directly from the Senator from Iowa himself, that if he were present he would vote against this amendment.

The result was announced—yeas 23, nays 35; as follows:

YEAS—23.

| | | | |
|---|---|---|---|
| Allison, | Eaton, | Kellogg, | Sargent, |
| Barnum, | Ferry, | Matthews, | Saunders, |
| Blaine, | Gordon, | Mitchell, | Spencer, |
| Bruce, | Hill, | Paddock, | Teller, |
| Conover, | Ingalls, | Plumb, | Voorhees. |
| Dennis, | Jones of Florida, | Rollins, | |

NAYS—35.

| | | | |
|---|---|---|---|
| Anthony, | Cockrell, | Kernan, | Patterson, |
| Armstrong, | Coke, | Lamar, | Randolph, |
| Bailey, | Davis of Illinois, | McCreery, | Ransom, |
| Bayard, | Davis of West Va., | McDonald, | Saulsbury, |
| Beck, | Edmunds, | McPherson, | Thurman, |
| Booth, | Garland, | Maxey, | Wadleigh, |
| Butler, | Grover, | Merrimon, | Wallace, |
| Burnside, | Hereford, | Morgan, | Windom. |
| Christiancy, | Johnston, | Oglesby, | |

ABSENT—18.

| | | | |
|---|---|---|---|
| Cameron of Pa., | Dorsey, | Howe, | Sharon, |
| Cameron of Wis., | Eustis, | Jones of Nevada, | Whyte, |
| Chaffee, | Hamlin, | Kirkwood, | Withers. |
| Conkling, | Harris, | McMillan, | |
| Dawes, | Hoar, | Morrill, | |

So the amendment was rejected.

Mr. THURMAN. I now move the amendment that I had laid on the table a few days ago and which was printed as an addition to the third section. I move to insert at the end of section 3 the following:

All the bonds belonging to said fund shall, as fast as they shall be obtained, be

so stamped to show that they belong to said fund, and that they are not good in the hands of other holders than the Secretary of the Treasury until they shall have been indorsed by him, and publicly disposed of pursuant to this act.

The amendment was agreed to.

The PRESIDING OFFICER. The Secretary informs the Chair that the Senator from California [Mr. SARGENT] gave notice of an amendment that has not been formally offered.

Mr. SARGENT. It is obviously useless to offer any amendments to this bill. There is a determination to vote down all amendments of any character whatever. I think I see that so clearly that I shall not offer in form any amendments which I proposed the other day, although I submit they would be an improvement to the bill. I have no doubt that the same vote which voted down the amendment of the Senator from Maine would vote down every other amendment. For that reason I shall not offer an amendment.

The PRESIDING OFFICER. The question recurs upon the amendment offered by the Senator from Colorado [Mr. CHAFFEE] to strike out all after the enacting clause of the bill and insert what will be read.

Mr. CHAFFEE. From the vote just taken I am satisfied, with the Senator from California, that the Senate is determined to pass the bill without any amendment whatever, and as there are some provisions in the bill which I offered as a substitute which I do not care to have the Senate negative—I refer to the provision regarding the prorate question—I desire to withdraw that amendment.

The PRESIDING OFFICER. The Senator is entitled to withdraw the amendment under the rules, the yeas and nays not having been ordered. The amendment is withdrawn.

Mr. EDMUNDS. Some Senators have suggested that the ninth section of the bill, which declares that there is a lien in behalf of the United States on the whole property of the company for the security of this debt of the United States, might be construed strictly, although I do not think it could be, to prevent the company from disposing of the lands in the ordinary course of its business and getting assets from them, and so on. In order to cover that, to guard against any possible misconstruction or doubt, so as to make it what the committee intended it beyond all possible question, I offer this amendment, to come in at the end of section 9, and as part of it:

But this section shall not be construed to prevent said companies, respectively, from using and disposing of any of their property or assets in the ordinary, proper, and lawful course of their current business, in good faith, and for valuable consideration.

The object of the amendment is to relieve it from all criticism and doubt that have been suggested about that section. I am bound to say that I do not think the section would bear any such construction, but there is no harm in making it clear if any one has doubts about it.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. SARGENT. I ask for the yeas and nays on the passage of the bill.

Mr. EDMUNDS. Certainly; by all means.

The yeas and nays were ordered.

Mr. BLAINE. I said very frequently during the debate that if my

amendment, which the Senate did not see fit to agree to, had been adopted, I would have cheerfully voted for the bill. I cannot vote for the bill without it, but I should be very happy to find in the event of future years that I vote unwisely.

Mr. MITCHELL. Mr. President, I made some remarks on this question some days ago. The principal portion of my time was devoted to the question involved in the amendment suggested by the honorable Senator from Maine, namely, that this should be a final settlement of this question. I believe that the great objection to this measure is to be found in the fact that it leaves this question open for years and years to come. It is not the great hardship of the terms imposed, but the hardship is to be found in the fact that, after Congress has imposed its own terms it is not willing to be bound by its own propositions. Believing as I do that if these companies do not assent to the propositions tendered by Congress in this bill, and undertake to litigate this measure, it will not stand the test of litigation in the courts, and believing as I do that the great objection that has always been raised by the companies to this measure, and the objection that will be raised to it now by them, is to be found in the fact of the reservation of the right to alter, amend, and repeal the very terms of the contract now proposed by Congress, and believing as I do that that objection would have been removed by the adoption of the amendment offered by the honorable Senator from Maine, I voted for that amendment. Had that amendment been adopted, I should have voted for the bill of the Judiciary Committee in the belief that with the bill so amended by the removal of this one objection, which is the great objection to the bill, the companies would have assented to the bill and thus a finality would have been placed on this whole litigation. But, sir, believing as I do that without that assent the bill is unconstitutional, is not and cannot be made binding, I shall now vote against the bill. I only regret that the amendment offered by the honorable Senator from Maine was not adopted. I believe its adoption would have led to the passage of the bill by an almost unanimous if not quite a unanimous vote; that it would have been accepted by the companies; that the Government would be reimbursed for this whole indebtedness; and that this controversy would have been taken from the halls of Congress for the next twenty years, or at least until such time as the companies might fail to comply with the terms now proposed; and the amendment of the honorable Senator from Maine reserved the right to interfere whenever the companies failed to comply with those terms.

The PRESIDING OFFICER. The question is on the passage of the bill, on which the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. CAMERON, of Pennsylvania, (when his name was called.) On this question I am paired with the Senator from New York, [Mr. CONKLING.] I should vote "yea" if he were present.

Mr. EDMUNDS. Mr. President, I will say on the part of the Senator from New York [Mr. CONKLING] that he requested me to announce, if the Senator from Pennsylvania [Mr. CAMERON] should not happen to be here, the pair, and to say that his objections to the bill are not of the fundamental character that have been sometimes——

The PRESIDING OFFICER. Debate is not in order pending the call of the roll.

Mr. EDMUNDS. Not in explaining the pair of a Senator?

The PRESIDING OFFICER. The Chair understands that no debate is in order.

Mr. EDMUNDS. I do not propose to debate. I ask unanimous consent to state that my friend from New York is paired and the grounds of it.

The PRESIDING OFFICER. Is there objection? ["No objection."] The Senator will proceed by unanimous consent.

Mr. EDMUNDS. The Senator from New York desired me to say that there were some features in the bill which if left as it was he could not assent to, and therefore voting against it if left as it stands without intending to express an opinion against the principle upon which it is founded.

Mr. CHAFFEE, (when his name was called.) On this question I am paired with the Senator from Vermont, [Mr. MORRILL.] If he were here I should vote "nay."

Mr. DAWES, (when his name was called.) Upon this question am paired with my colleague, [Mr. HOAR.] If he were here I should vote "nay."

Mr. McMILLAN, (when his name was called.) On the passage of the bill I am paired with the Senator from Wisconsin, [Mr. CAMERON.] If he were here I should vote "yea."

Mr. SAULSBURY, (when his name was called.) I am paired with the Senator from Maine [Mr. HAMLIN] on political questions. I do not regard this as a political question, and besides I have been informed that the Senator from Maine stated that he did not care how this question was decided. He only asked me to pair with him on political questions.

Mr. DAVIS, of Illinois. There is nothing political about this question.

Mr. SAULSBURY. I say there is not, and therefore I shall vote.

The PRESIDING OFFICER. Debate is not in order pending the call of the roll.

Mr. SAULSBURY. I vote "yea."

Mr. TELLER, (when his name was called.) On this vote I am paired with the Senator from Iowa, [Mr. KIRKWOOD.] I was not paired on any collateral vote upon amendments. I should vote, if the Senator from Iowa were here, against the bill. I should have voted against the bill even if the amendment of the Senator from Maine [Mr. BLAINE] had been adopted.

Mr. JOHNSTON, (when the name of Mr. WITHERS was called.) I desire to announce again that my colleague [Mr. WITHERS] is compelled to stay at home, and is unable to be present. If he were here he would vote "yea."

The roll-call having been concluded, the result was announced—yeas 40, nays 20; as follows:

YEAS—40.

| | | | |
|---|---|---|---|
| Anthony, | Coke, | Jones of Florida, | Patterson, |
| Armstrong, | Davis of Illinois, | Kernan, | Plumb, |
| Bailey, | Davis of W. Va., | Lamar, | Ransom, |
| Bayard, | Edmunds, | Maxey, | Rollins, |
| Beck, | Eustis, | McCreery, | Saulsbury, |
| Booth, | Garland, | McDonald, | Thurman, |
| Burnside, | Grover, | McPherson, | Voorhees, |
| Butler, | Harris, | Merrimon, | Wadleigh, |
| Christiancy, | Hereford, | Morgan, | Wallace, |
| Cockrell, | Johnston, | Oglesby, | Windom. |

NAYS—20.

| | | | |
|---|---|---|---|
| Allison, | Dennis, | Hill, | Paddock, |
| Barnum, | Dorsey, | Howe, | Randolph, |
| Blaine, | Eaton, | Kellogg, | Sargent, |
| Bruce, | Ferry, | Matthews, | Saunders, |
| Conover, | Gordon, | Mitchell, | Spencer. |

ABSENT—16.

| | | | |
|---|---|---|---|
| Cameron of Pa., | Dawes, | Jones of Nevada, | Sharon, |
| Cameron of Wis., | Hamlin, | Kirkwood, | Teller, |
| Chaffee, | Hoar, | McMillan, | Whyte, |
| Conkling, | Ingalls, | Morrill, | Withers. |

So the bill was passed.

The PRESIDING OFFICER. The question recurs on the preamble as amended.

The preamble was agreed to.

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## HOUSE OF REPRESENTATIVES.

APRIL 10, 1878.

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MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had passed and requested the concurrence of the House in bills of the following titles:

A bill (S. No. 15) to alter and amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862; and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

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APRIL 11, 1878.

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TEXAS PACIFIC RAILROAD.

Mr. HARTRIDGE. Mr. Speaker, I ask by unanimous consent to take from the Speaker's table the bill (S. No. 15) to alter and amend an act entitled "An act to aid in the construction of the railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to amend and alter an act of Congress approved July 2, 1864, in amendment of said first-named act, and to move its reference to the Committee on the Judiciary.

Mr. COX, of New York. Is there any objection on the part of the House to put this bill on its passage immediately? If there is no objection, I ask it be put on its passage.

Mr. HENDEE. I object.

Mr. COX, of New York. I should like to ask the Chair a question, whether at the end of the morning hour to-day it will be in order to move to go to the Speaker's table to reach this bill and then put it on its passage; whether by majority vote that can be done?

Mr. BURCHARD. Not if it is referred to the Committee on the Judiciary.

The SPEAKER. The Chair desires to state in reply to the gentleman from New York that after the morning hour the motion to go to the business upon the Speaker's table is in order, and if a majority shall decide to go to the Speaker's table then in its regular course this bill will be reached and will be under the control of a majority of the House, and if the House shall see fit by adequate motion to insist on its present consideration it can be so considered, in the opinion of the Chair.

Mr. COX, of New York. Then I object to the reference of the bill.

Mr. SAMPSON. As I understand it this bill has been taken from the Speaker's table.

The SPEAKER. It has not; it only came yesterday from the Senate.

Mr. SAMPSON. Was not the motion to refer it to the Judiciary Committee?

The SPEAKER. The gentleman from Georgia asked unanimous consent to take the bill from the Speaker's table and to refer it to the Judiciary Committee. The gentleman from New York raised what was in the nature of an objection.

Mr. COX, of New York. Yes, sir; I object to its reference and now give notice that a motion will be made at the end of the morning hour to go to the business upon the Speaker's table in order to reach the bill and by a majority vote to pass it.

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APRIL 17, 1878.

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PACIFIC RAILWAY COMMISSION.

Mr. RICE, of Massachusetts, from the same committee, reported, as a substitute for House bills Nos. 3999, 4117, and 4118, a bill (H. R. No. 4399) to establish a board of Pacific Railroad commissioners; which was read a first and second time, referred to the Committee of the Whole on the public Calendar, and, with the accompanying report, ordered to be printed.

Mr. CRITTENDEN. Would it be in order to move that this bill be made a special order for the 10th of May, not to conflict with appropriation bills or other prior orders?

The SPEAKER. It will be competent for the committee to report a resolution of that sort.

Mr. CRITTENDEN. I ask the gentleman from Massachusetts whether he will accept a motion to that effect?

Mr. RICE, of Massachusetts. I will accept a motion of that kind.

Mr. CRITTENDEN. Say, then, the 15th of May, not to conflict with appropriation bills.

Mr. BLAIR. That requires an appropriation and should go to the Committee of the Whole.

The SPEAKER. That is not the point; but the point is this: the committee must authorize and report such a resolution.

Mr. BLAIR. In that matter I wish to present the views of the minority with the accompanying bill.

The SPEAKER. The report will be received and ordered to be printed. The committee have not made the motion referred to by the gentleman from Missouri.

Mr. CRITTENDEN. The gentleman from Massachusetts agrees to it.

The SPEAKER. The committee must authorize it. This is the morning hour for the reception of reports from committees and extraneous motions are not in order.

* * * * * * *

PACIFIC RAILROAD.

Mr. CHALMERS. I am directed by the Committee on the Pacific Railroad to report back favorably the bill (H. R. No. 4158) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act. I ask that the bill and report be printed. It is the identical bill which has since come from the Senate known as the Thurman funding bill.

Mr. COX, of New York. Then I move that the Thurman funding bill which comes from the Senate be moved as a substitute for this proposition.

The SPEAKER. The Chair will ask consent.

Mr. CHALMERS. I ask that that substitute be received as an amendment and be put upon its passage.

The SPEAKER. That requires unanimous consent.

Mr. BLAIR. I shall object unless I can make a previous report.

The SPEAKER. There is no difficulty about that bill if the House desires to reach it. The morning hour will expire within ten minutes, when the motion to go to the business upon the Speaker's table will be in order and the Thurman funding bill can then be reached.

Mr. CHALMERS. Then I move that the bill and report be referred to the Committee of the Whole on the state of the Union and ordered to be printed.

The motion was agreed to.

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PACIFIC RAILROAD COMMISSIONERS.

Mr. RICE, of Massachusetts. I am directed by the Committee on the Pacific Railroad to report the following resolution:

*Resolved*, That the substitute for House bills 2608, 3999, 4117, and 4118, to establish a board of Pacific Railroad commissioners, be made the special order for the 15th of May, not to antagonize reports from the Committee on Appropriations or the Committee of Ways and Means or previous special orders.

Mr. PRICE. What bill is that?

Mr. HOUSE. What is known as the prorate bill.

Mr. SAMPSON. Is that the action of the committee?

The SPEAKER. The Chair understood the gentleman to report it from the committee.

Mr. RICE, of Massachusetts. Yes, sir.

The resolution was adopted.

Mr. RICE, of Massachusetts, moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

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PACIFIC RAILROAD COMMISSION.

Mr. BLAIR. I rise to make a parliamentary inquiry. I wish to call attention to the disposition of what is known as the *pro rata* bill

reported by the Committee on the Pacific Railroad, and which I understand has been made a special order for the 15th of May. At the time when that was proposed I objected to its being done. I understand that the committee have consulted upon this floor, and that with the assent of a majority that order has been made. I am opposed to it.

The SPEAKER. That was a report made in the morning hour, and the morning hour has passed by.

Mr. BLAIR. I ask if an entry has been made contrary to the understanding as announced in the House, and I wish to know whether that can be done properly or not.

The SPEAKER. The Chair will cause the entry on the Journal to be read. The gentleman rises, it seems, to a question of privilege, and states that something has been done that was not agreed to be done.

Mr. BLAIR. If the Chair pleases, I will state in a few words all there is in this matter. I do not rise to make any captious objection or to find fault. I wish to know what the right is in this matter. It will be recollected that when the bill was reported some gentlemen wanted to make it a special order for the 15th of May. I objected to that being done. The Chair stated to the House that it could only be done by virtue of a resolution reported from the committee itself. There was no opportunity for any meeting of the committee and there could be no such resolution agreed to. The matter passed, my understanding being that there was no special order made. I learn now that by private consultation between members of the committee, to which I was not made a party, and by consent thus obtained, the entry has been changed on the Journal, and the bill has been made a special order for May 15.

The SPEAKER. Nothing has been entered on the Journal that did not take place in the House. If a gentleman in his capacity as a member of his committee rises and states that the resolution he presents is offered by the direction of the committee, the Chair cannot dispute his word.

Mr. BLAIR. I would like to know if the Journal shows that any such statement was made by any member of the committee. I would like to have the Journal read.

The SPEAKER. The Journal shows that the resolution, which will now be read, was reported from the committee and agreed to by the House.

The Clerk read as follows:

*Resolved*, That the substitute for House bill No. 3999 be made a special order for the 15th of May, not to antagonize reports from the Committee on Appropriations and the Committee of Ways and Means and previous special orders.

Mr. BLAIR. What does the Journal show?

The SPEAKER. It shows that it was reported from the committee and adopted by the House.

Mr. BLAIR. I state as a matter of fact that it was done without my knowledge, and every member of the committee knew of my presence and of my objections. I did not hear anything that transpired in open House of that description whatever, and I was paying close attention.

The SPEAKER. The gentleman from Massachusetts stated, if the Chair recollects aright, that the resolution was offered by the direction of the committee.

Mr. RICE, of Massachusetts. I did.

The SPEAKER. The gentleman reaffirms that statement, and the Chair has nothing to do with the matter further.

Mr. RICE, of Massachusetts. By the authority of the committee, obtained upon the floor of the House, I offered the resolution. The gentleman from New Hampshire was consulted, and declined to concur with the other members of the committee, but a majority of the committee authorized the report.

Mr. BLAIR. I wish to say in reply to the suggestion of the gentleman from Massachusetts that the committee was consulted, and that I was consulted as a member of the committee; that all that occurred as a matter of fact was this: I stood in my place waiting to offer a report, and the gentleman from Massachusetts desired me not to object to this bill being made a special order on the 15th of May. I did not withdraw my objection, and no suggestion was made to me of any consultation with other members of the committee or of any action of the committee at all.

The SPEAKER. The Chair has nothing to do with the subject beyond his duty to submit the motion.

Mr. BLAIR. How could a committee sit during the session of the House?

The SPEAKER. That is for the committee to determine. No point of order was raised by any one.

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APRIL 24, 1878.

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PACIFIC RAILROAD FUNDING BILL.

The next business on the Speaker's table was the bill (S. No. 15) to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862; and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act; which was read a first and second time.

Mr. COX, of New York. I move to put this bill upon its passage.

Mr. BUTLER. Let it be read first.

The bill was read, as follows:

Whereas on the 1st day of July, A. D. 1862, Congress passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes;" and

Whereas afterward, on the 2d day of July, A. D. 1864, Congress passed an act in amendment of said first-mentioned act; and

Whereas the Union Pacific Railroad Company, named in said acts, and under the authority thereof, undertook to construct a railway, after the passage thereof, over some part of the line mentioned in said acts; and

Whereas, under the authority of the said two acts, the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, undertook to construct a railway, after the passage of said acts, over some part of the line mentioned in said acts; and

Whereas the United States, upon demand of said Central Pacific Railroad Company, have heretofore issued, by way of loan and as provided in said acts, to and for the benefit of said company, in aid of the purposes named in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at 6 per cent. per annum, payable half yearly, to the amount of $25,885,120, which said bonds have been sold in the market or otherwise disposed of by said company; and

Whereas the said Central Pacific Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior

and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas, after the passage of said acts, the Western Pacific Railroad Company, a corporation then existing under the laws of California, did, under the authority of Congress, become the assignee of the rights, duties, and obligations of the said Central Pacific Railroad Company, as provided in the act of Congress passed on the 3d of March, A. D. 1865, and did, under the authority of the said act and of the acts aforesaid, construct a railroad from the city of San José to the city of Sacramento, in California, and did demand and receive from the United States the sum of $1,970,560 of the bonds of the United States, of the description before mentioned as issued to the Central Pacific Company, and in the same manner and under the provisions of said acts; and upon and in respect of the bonds so issued to both said companies the United States have paid interest to the sum of more than thirteen and a half million dollars, which has not been reimbursed; and

Whereas said Western Pacific Railroad Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States to it, and secured the same by mortgage, which are, if lawfully issued and disposed of, a prior and paramount lien to that of the United States, as stated, and secured thereby; and

Whereas said Western Pacific Railroad Company has since become merged in and consolidated with said Central Pacific Railroad Company, under the name of the Central Pacific Railroad Company, whereby the said Central Pacific Railroad Company has become liable to all the burdens, duties, and obligations before resting upon said Western Pacific Railroad Company; and divers other railroad companies have been merged in and consolidated with said Central Pacific Railroad Company; and

Whereas the United States, upon the demand of the said Union Pacific Railroad Company, have heretofore issued, by way of loan to it and as provided in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at 6 per cent. per annum, payable half yearly, the principal sums of which amount to $27,236,512; on which the United States have paid over $10,000,000 interest over and above all reimbursements; which said bonds have been sold in the market or otherwise disposed of by said corporation; and

Whereas said corporation has issued and disposed of an amount of its own bonds equal to the amount so issued to it by the United States as aforesaid, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United States, of the said Central Pacific Company amount in the aggregate to more than $96,000,000, and those of the said Union Pacific Railroad Company to more than $88,000,000; and

Whereas the United States, in view of the indebtedness and operations of said several railroad companies, respectively, and of the disposition of their respective incomes, are not, and cannot without further legislation be, secure in their interests in and concerning said respective railroads and corporations, either as mentioned in said acts or otherwise; and

Whereas a due regard to the rights of said several companies, respectively, as mentioned in said act of 1862, as well as just security to the United States in the premises, and in respect of all the matters set forth in said act, require that the said act of 1862 be altered and amended as hereinafter enacted; and

Whereas, by reason of the premises also, as well as for other causes of public good and justice, the powers provided and reserved in said act of 1864 for the amendment and alteration thereof ought also to be exercised as hereinafter enacted: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the net earnings mentioned in said act of 1862 of said railroad companies, respectively, shall be ascertained by deducting from the gross amount of their earnings, respectively, the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them, respectively, within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies, respectively, for interest upon any other portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of 1864, as well as of said act of 1862. This section shall take effect on the 30th day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or of either of said railroad companies existing prior thereto.

SEC. 2. That the whole amount of compensation which may, from time to time, be due to said several railroad companies, respectively, for services rendered for the

Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid to each of said corporations severally, and the other half thereof to be turned into the sinking fund hereinafter provided, for the uses therein mentioned.

SEC. 3. That there shall be established in the Treasury of the United States a sinking fund, which shall be invested by the Secretary of the Treasury in bonds of the United States, and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereinafter mentioned. And in making such investments the Secretary shall prefer the 5 per cent. bonds of the United States, unless for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States. All the bonds belonging to said fund shall, as fast as they shall be obtained, be so stamped as to show that they belong to said fund, and that they are not good in the hands of other holders than the Secretary of the Treasury until they shall have been indorsed by him and publicly disposed of pursuant to this act.

SEC. 4. That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest; and in addition thereto the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of $1,200,000, or so much thereof as shall be necessary to make the 5 per cent. of the net earnings of its said road payable to the United States under said act of 1862, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to 25 per cent. of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the 31st day of December next preceding.

That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Union Pacific Railroad Company, not applied in liquidation of interest; and in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of $850,000, or so much thereof as shall be necessary to make the 5 per cent. of the net earnings of its said road payable to the United States under said act of 1862, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to 25 per cent. of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the 31st day of December next preceding.

SEC. 5. That whenever it shall be made satisfactorily to appear to the Secretary of the Treasury, by either of said companies, that 75 per cent. of its net earnings as hereinbefore defined, for any current year are or were insufficient to pay the interest for such year upon the obligations of such company, in respect of which obligations there may exist a lien paramount to that of the United States, and that such interest has been paid out of such net earnings, said Secretary is hereby authorized, and it is made his duty, to remit for such current year so much of the 25 per cent. of net earnings required to be paid into the sinking fund, as aforesaid, as may have been thus applied and used in the payment of interest as aforesaid.

SEC. 6. That no dividend shall be voted, made, or paid for or to any stockholder or stockholders in either of said companies respectively at any time when the said company shall be in default in respect of the payment either of the sums required as aforesaid to be paid into said sinking fund, or in respect of the payment of the said 5 per cent. of the net earnings, or in respect of interest upon any debt the lien of which, or of the debt on which it may accrue, is paramount to that of the United States; and any officer or person who shall vote, declare, make, or pay, and any stockholder of any of said companies who shall receive any such dividend contrary to the provisions of this act, shall be liable to the United States for the amount thereof, which, when recovered, shall be paid into said sinking fund. And every such officer, person, or stockholder who shall knowingly vote, declare, make, or pay any such dividend, contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $10,000, and by imprisonment not exceeding one year.

SEC. 7. That the said sinking fund so established and accumulated shall, at the maturity of said bonds so respectively issued by the United States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not reimbursed, subject to the provisions of the next section.

SEC. 8. That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for

the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order; but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner in this act provided, of any mortgage, lien, or other creditor of any of said companies respectively, nor to excuse any of said companies respectively from the duty of discharging, out of other funds, its debts to any creditor except the United States.

SEC. 9. That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into the Treasury, or into said sinking fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon all the property, estate, rights, and franchises of every description granted or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal, and mixed, assets and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon. But this section shall not be construed to prevent said companies respectively from using and disposing of any of their property or assets in the ordinary, proper, and lawful course of their current business, in good faith and for valuable consideration.

SEC. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceeding against the said several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceeding already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to.

SEC. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

SEC. 12. That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal, as, in the opinion of Congress, justice or the public welfare may require. And nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in favor of the United States.

SEC. 13. That each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of 1862 and of said act of 1864 respectively, and of both said acts.

Mr. BUTLER. I rise to a point of order.

The SPEAKER. The gentleman will state it.

Mr. BUTLER. This bill, as nearly as I can ascertain by following the reading—the printed Senate bill I have ascertained is quite different in many respects from the manuscript bill which has just been read—this bill proposes that certain moneys due from several railroad companies to the United States, and which ought to go into the Treasury of the United States for the general use of the people of the United States, shall be put into a sinking fund and invested in that sinking fund for a long series of years, and that the sinking fund is to be used to pay certain private claimants against these railroad corporations who have an undermortgage. First, it takes out of the Treasury of the United States, or keeps from going into the Treasury, money that ought to go into it, and puts it into a sinking

fund to be invested; and, secondly, it disposes of that money by paying it to private individuals without further appropriation by law.

Now, it may be answered that the United States would have to redeem that mortgage because it is an undermortgage. But that question ought to be determined when it comes up by the proper House of Representatives making an appropriation for that purpose. It may not be worth while when that question comes up to redeem that mortgage; the road may not be worth it in those days. It is here proposed by this bill to provide a sinking fund for the redemption of that mortgage, and the whole amount is hereby appropriated.

I think, if there ever was a bill that was a "money bill" in the language of the old law, a funding bill providing a sinking fund for the benefit of private mortgagees is one of those "money bills," and should receive its first consideration in Committee of the Whole.

The SPEAKER. The gentleman will be kind enough to direct the attention of the Chair to the exact language of the bill upon which he relies.

Mr. BUTLER. I will as nearly as I can, following the printed bill which does not in all respects correspond with the bill read by the clerk.

The first section of the bill provides:

That the net earnings mentioned in said act of 1862, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary and actual expenses of operating the same, and keeping the same in a state of repair, and not otherwise, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of 1864, as well as of said act of 1862.

SEC. 2. That the whole amount of compensation which may from time to time be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking fund hereinafter provided for the uses therein mentioned.

Then the third section provides:

That there shall be established in the Treasury of the United States a sinking fund, which shall be invested in bonds of the United States; and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereinafter mentioned.

The fourth section provides:

That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking fund, the sum of $1,500,000, or so much thereof as shall be necessary to make the 5 per cent of the net earnings of its said road payable to the United States under said act of 1862, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to 25 per cent. of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the 31st day of December next preceding.

Then the same provisions are applied to certain other railroads and their compensation.

Sections 5, 6, and 7, provide for supervision to see that the sinking fund gets what belongs to it. Then the eighth section provides:

That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable

upon the funds so required to be paid into said sinking fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order; but the provisions of this section shall not operate or be held to impair any existing legal right.

Then it is made the duty of the Attorney-General to prosecute; and what is rather remarkable (though it has not anything to do with the point of order) the bill directs the Supreme Court how they shall decide the question.

Restating my point of order, I would say there are certain moneys now due and to become due as compensation from the United States to certain railroads—very large amounts of money. Of these moneys a part is to be paid for a certain purpose into the Treasury of the United States and a part is to be devoted to other purposes. Now, this bill takes those moneys and puts them into the sinking fund to be held with all the interest accruing thereon by the Secretary of the Treasury, as custodian of the fund, and at the end to be paid to the private mortgagees of the road. Here is a fund to pay them in any event. Now, suppose that for any reason at the end of this time—twenty years hence, as it will be I doubt not—this road, by reason of the improvements that may be made within the next generation, should not be worth to the United States or anybody else the amount of the first mortgage; yet that first mortgage is to be paid out of the sinking fund, not leaving to the men who shall come after us at that day the right to judge whether they will appropriate the money of the United States for that purpose at that time.

In stating my point of order, as the Speaker will observe, I have carefully avoided referring to other objections which I may have to the bill. I submit that the bill appropriates money which belongs to the Treasury of the United States, is therefore a money bill, and should receive its first consideration in Committee of the Whole.

Mr. CARLISLE. Is not the gentleman in error in insisting that this bill makes an appropriation from the Treasury of the United States of money belonging to the Government? Does it not simply provide what disposition shall be made of money belonging to the railroad companies, which is held by the United States in trust for them and their creditors?

Mr. BUTLER. I am very much obliged to my friend for the question. My proposition is that this money, or at least a portion of it, this compensation of the railroad companies, is now by law to go into the Treasury of the United States for the benefit of the Treasury. I do not say that the money is there now. But a bill appropriating the public lands of the United States is treated as a money bill, because it takes away what belongs to the United States and would go into the Treasury if not otherwise disposed of. Therefore I say that this bill takes from the Treasury money which belongs to the United States and diverts it to a sinking fund for the benefit of mortgagees, whom the Government is to pay, though the mortgage when it becomes due may not be worth the paper on which it is written.

Mr. MORRISON. I think that the gentleman from Massachusetts [Mr. BUTLER] is in error in saying that any money which now goes into the Treasury of the United States by the provisions of this bill will be paid into the sinking fund. Under the law as it now stands, the Government is to receive 5 per cent. of the net earnings and one-half of the cost of the carrying done for the Government. Now this bill does not provide that this one-half of the cost of service shall go into the sinking fund at all; nor does it provide that the 5 per cent.

shall go into the sinking fund. But the one-half that is now paid to the Government, and the 5 per cent. are taken into consideration in making up the 25 per cent. The companies pay into the sinking fund only 25 per cent, after deducting what under existing law goes to the United States; and the Government continues to receive that sum.

Mr. BUTLER. The gentleman will allow me to call his attention to the provision of the bill in respect to one of these companies, the same provision being repeated as to the others:

That there shall be carried to the credit of the said fund, on the 1st day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Union Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury to the credit of said sinking fund, the sum of $350,000, or so much thereof as shall be necessary to make the 5 per cent. of the net earnings of its said road payable to the United States, under said act of 1862, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to 25 per cent. of the whole net earnings of said railroad company, ascertained, and defined as hereinbefore provided, for the year ending on the 31st day of December next preceding.

Mr. MORRISON. Certainly.

Mr. BUTLER. Not only the half of the compensation but 25 per cent. in addition must go into the sinking fund.

Mr. MORRISON. No, sir; only the half of the cost of carrying for the Government which the Government does not now receive is to go into the sinking fund. The other half which the Government now receives is only mentioned in the bill for the purpose of ascertaining what shall be the 25 per cent.

Mr. BUTLER. The language of the bill is, "shall be paid in."

Mr. MORRISON. As to the point the gentleman makes as to taking money belonging to the United States and putting it into the Treasury for the purpose of paying ultimately the first-mortgage bonds, this bill is constructed upon the hypothesis that the first mortgage is a prior lien and must be first paid; and further, that the money which we propose to compel the companies to pay into the sinking fund is not the money of the United States, and never will be until that first mortgage, which is a prior lien, is extinguished. If this money is required to discharge the first mortgage it should be first applied to that purpose, as that mortgage is first in right; when that is discharged the Government will have the first right. This is not the money of the Government; it is not intended to be the money of the Government until this other mortgage is discharged.

Mr. BUTLER. I respectfully submit, then, Mr. Speaker, we have nothing to do with it.

The SPEAKER. The Chair is ready to decide the point of order. [Cries of "Question!"] The Chair thinks that the rule upon which the gentleman from Massachusetts relies, that all proceedings touching the appropriation of money and all bills making appropriations of money or property, or requiring such appropriations to be made, or authorizing payments out of appropriations already made, shall be first discussed in the Committee of the Whole, applies to public money, to public land, or to public property, and that, consequently, it does not apply to money coming into the Treasury of the United States in trust for purposes which are indicated. The rule evidently applies to public money going out of the Treasury. This bill in its general scope is to bring money into the Treasury of the United States for particular trust purposes, and therefore, in the opinion of the Chair,

Rule 112, which has just been quoted, does not apply to it. The point of order is overruled.

Mr. BEEBE. Now let us have the previous question.

Mr. COX, of New York. I demand the previous question.

Mr. HASKELL. I rise for the purpose of asking a parliamentary question.

The SPEAKER. The gentleman will state it.

Mr. HASKELL. Does the decision of the Chair, just made, cover the case where a trust fund in the hands of the Government is sought to be applied in a bill to any specific purpose?

The SPEAKER. The Chair, under the rule, is called only to decide upon questions before the House. He has decided the question raised upon the bill now pending. Whenever the case which the gentleman from Kansas may have in his mind comes up and the point of order is raised the Chair will rule upon it.

Mr. COX, of New York. I wish to ask a parliamentary question. If I call the previous question now will I be entitled to an hour after the main question has been ordered?

The SPEAKER. The rule provides only for the member reporting a measure to be heard after the previous question has been called. This bill is before the House for consideration, and as the gentleman has been recognized he is entitled to an hour if he chooses to take the floor for debate.

Mr. COX, of New York. Then I give notice that at the end of my hour I will demand the previous question.

Mr. CONGER. Under the rules is anybody entitled to debate a proposition after the previous question has been seconded and the main question ordered except the member reporting the measure?

The SPEAKER. The Chair has so decided, and such is the rule.

Mr. CONGER. How, then, does the gentleman from New York become entitled to the floor to debate this question for an hour?

The SPEAKER. By parliamentary courtesy the member upon whose motion a subject is brought before the House is first entitled to the floor, and as it was on the motion of the gentleman from New York the House went to the business upon the Speaker's table for the purpose of reaching the pending bill, the Chair has recognized him as first entitled to the floor.

Mr. CONGER. Does the rule apply to him as being entitled to an hour for debate after the previous question has been seconded?

The SPEAKER. The gentleman from New York did not report this measure, and therefore is not entitled to an hour after the previous question has been seconded. But that is not the case here. He has sought the floor on the pending bill and is recognized by the Chair, and is entitled to be heard for an hour to debate the question before calling the previous question.

Mr. COX, of New York. And I give notice that at the close of my hour I shall demand the previous question.

Mr. CONGER. I do not object to an hour now before the previous question is called and seconded.

The SPEAKER. The gentleman from New York would not be entitled to another hour after the previous question has been called, as he is not the reporter of the measure.

Mr. COX, of New York. I do not intend to occupy the whole of my hour.

The SPEAKER. The practice has been heretofore at times to test the sense of the House by making a demand for the previous question, and if the disposition of the House has been in favor of debate

and the previous question has not been seconded, under the courtesy to which the Chair has referred the gentleman on whose motion the subject was brought before the House has been recognized.

Mr. BUTLER. How is the rule?

The SPEAKER. Only the reporter of a measure is entitled to an hour after the main question has been ordered. The gentleman from New York has an hour, the bill being under consideration.

Mr. COX, of New York. Very well; I will take my hour now and demand the previous question when I have concluded my remarks.

Mr. BUTLER. Will you divide the time with us?

Mr. COX, of New York. I intend to speak but a short time.

Mr. BEEBE. The gentleman says he will divide the time with you.

Mr. BUTLER. That is fair.

Mr. FRYE. I rise to make a parliamentary inquiry. The gentleman from New York has moved to pass this bill in concurrence with the Senate, and on that demands the previous question. I wish to inquire of the Speaker whether or not under Rule 54 the demand for the previous question will cut me off from making the motion provided there, to commit to the Judiciary Committee, as I have been instructed to do by that committee?

The SPEAKER. If the gentleman will read Rule 42 he will find it provides that when a question is under debate no motion shall be received but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit or amend, to postpone indefinitely; which several motions shall have precedence in the order in which they are arranged. The rule is express on that subject.

Mr. FRYE. Under Rule 54, if the Chair pleases, to be found on page 112, will be found the order to be observed when the House goes to the business on the Speaker's table at the expiration of the morning hour. In the third place, under that rule, "that bills and resolutions from the Senate, on their first and second reading, be referred to committees and put under way," I think the motion to refer to the Committee on the Judiciary is clearly in order.

The SPEAKER. The rule goes on to provide "and if on reading a second time no motion being made to commit, they are to be ordered to their third reading, unless objection be made; in which case, if not otherwise ordered by a majority of the House," &c. The majority of the House can order otherwise; the majority of the House may refuse to second the demand for the previous question, and if the majority of the House does refuse to second the demand for the previous question the Chair will recognize the gentleman from Maine or any other gentleman to move to commit the bill.

Mr. FRYE. But does not the demand for the previous question cut off the motion to commit at this time?

The SPEAKER. If the demand for the previous question is seconded and the main question ordered, of course it will cut off the motion to commit.

Mr. FRYE. I ask the Speaker to read the first portion of article 3 under that rule. It is as follows:

> 3. Bills and resolutions from the Senate on their first and second reading, that they be referred to committees and put under way.

Is not that the first proposition, and does it not take priority over every other?

The SPEAKER. The gentleman's view is that a motion to commit is first in order. The Chair thinks not. The Chair thinks that

Rule 42 is clear and distinct on that subject, and that the reservation made even in the paragraph of Rule 54 to which the gentleman directs the attention of the Chair, "if not otherwise ordered by a majority of the House," agrees practically with the order given in Rule 42, the principle being that a majority of this House have a right to conduct their business in the manner they see fit and to dispose of a bill as they shall see fit when it is up for consideration.

Mr. FRYE. Then I ask the gentleman from New York to allow me a word in relation to that motion to commit.

Mr. COX, of New York. If it does not come out of my time. My time is limited and I have agreed to give half of it to the other side.

Mr. FRYE. I will not take two minutes.

Mr. COX, of New York. I will give the gentleman two minutes.

Mr. FRYE. The Judiciary Committee, nine members being present and voting, instructed me to make the motion to commit this bill to the Judiciary Committee. Two members were absent. Those two absent members have since informed me that they were opposed to the committing of the bill to the Judiciary Committee, so that if they had been present and voted the motion would not have been made here in pursuance of a majority vote of the committee. But, under the instruction which I received at the regular meeting of the committee, I deem it my duty and propose now, if the opportunity is at any time offered, to move to commit this bill to the Judiciary Committee.

The SPEAKER. That can be done, if the House desires, by voting down the previous question.

Mr. COX, of New York. I yield for a moment to the gentleman from Ohio, [Mr. McMAHON.]

Mr. McMAHON. I desire to state in that connection that the Committee on the Judiciary had previously determined that the gentleman from New York should be permitted to move to proceed to business on the Speaker's table and pass this bill, and that this was agreed to by a vote in the full committee. The action adopted by the vote the gentleman from Maine speaks of was at a time when no member of the committee had notice that this particular matter was coming up; and it is true, as has been stated, that a majority of the Judiciary Committee prefer this bill to be acted upon and passed here.

Mr. COX, of New York. I now yield for a moment to the gentleman from Georgia, [Mr. HARTRIDGE.]

Mr. HARTRIDGE. I desire to make just one statement in addition to what my colleague on the committee has said. It is this: that four out of the nine who voted against this reference reserved to themselves the right to oppose the reference in the House.

Mr. COX, of New York. I now yield to the gentleman from Kentucky, [Mr. KNOTT.]

Mr. KNOTT. I desire simply to say that during the last Congress I devoted a great deal of time to the consideration of this subject, and was then in favor of the passage of a bill substantially the same as the bill now pending, which I believe passed the House with but nine dissenting voices. I am in favor of passing the bill as it has come to us from the Senate, and so voted in committee.

Mr. COX, of New York. I now yield to the gentleman from Pennsylvania, [Mr. STENGER.]

Mr. STENGER. I desire to say in this connection that I have examined the bill fully as a member of the Judiciary Committee. I am one of those who favor taking it up and passing it without any delay whatever.

Mr. COX, of New York. I yield a moment to my colleague, [Mr. LAPHAM.]

Mr. LAPHAM. Although I am in favor of this bill and expect to vote for it whenever the question comes before the House, yet it is a bill of such magnitude and importance that I thought it should take the usual course of a reference to the Judiciary Committee, and I voted in the committee for the reference. I still hope it will be sent there by the House.

Mr. McMAHON. The trouble about the reference is this: if this bill is referred to the Judiciary Committee with the limited time now intervening between the probable call of that committee and the present time, the committee could probably give it no further consideration than they have already, and it would interfere with the other public business the committee has to consider.

Mr. CASWELL. I desire to remind the House that the Committee on the Pacific Railroad have had this same bill under consideration, and have agreed to and reported the same to this House.

Mr. CONGER. The other members on the Judiciary Committee having made their statements, if the gentleman from New York will yield to me I will make mine.

Mr. COX, of New York. I suppose all this comes out of my time; but I will yield for a moment to the gentleman from Michigan.

Mr. CONGER. Several members of the Judiciary Committee have stated their desire that this bill be referred to them. While I am in favor of the passage of the bill, I felt, as some others did, that it should have the consideration of the Judiciary Committee, and asked it be referred. But if that should delay or jeopardize the passage of the bill, I certainly do not care to have it referred.

Mr. COX, of New York. The House is in no sense responsible for any delay in passing this bill. We were about to reach it by a summary method when the Senate concurrent resolution for adjournment reached us. By the rules that resolution, being on the Speaker's table, had priority of this measure. An unscrupulous lobby had delayed action for years. It was not the fault of the popular branch, for the Lawrence bill, even more stringent than this, had passed the House in the last Congress. If we are to believe what is reported as to the lobby and what our own eyes have seen, the most impudent attempt ever made to prevent legislation on this subject has been persisted in up to this hour.

It was not and is not necessary to refer this bill to any committee. The committees which have jurisdiction of such subjects have already agreed to its provisions. It will be found, I trust, that the methods by which railroads have been stolen, watered, and gutted through the tameness or corruption of other Legislatures will not prevail now and here. Even yet we are threatened that, if this bill passes, the Supreme Court will be found pliable enough to nullify it in the interest of stock-jobbers and monopolists.

The dictation of railway kings may assume that Congress which created them is attempting to intrench upon their private property and corporate franchises; but, sir, no amount of money is compensation enough for this Government for allowing corporate irresponsibility. There is not money enough represented by the public debt to pay for the imminence of the danger to our institutions if we suffer such corporations not only to enrich wrongfully the few who control them, but to become masters of the people. One of these magnates boasted that he could win his way by electing his agents by corruption at the polls at less cost than at the seat of government. It has

been his boast that even our best Senators had their price. Gentlemen should remember the uprising of last summer, when ten millions of people arose under a wild sense of injustice. It was a terrible protest against partial legislation, corporate chicanery, and overreaching greed.

Our railways should be managed in harmony with commercial, industrial, and public interests. No reserved power of legislation should be given away which lessens or destroys this power either by compromise, inaction, or indifference.

Plausible attempts were made to turn over to the United States twelve millions of acres of the land it had given to propitiate opposition and make a fair-seeming compromise. The attempt was a failure.

A bill of this nature which passed this House last Congress had no party aspect. It reached into the higher equities, where no party lash could reach. It is very clear that under this bill the Government may be secured, and still there will remain assets and profits sufficient to cover the stock rightly computed and pay handsome dividends upon that stock at its real value.

This bill is important in the sums, interests, and questions involved. It involves $120,000,000 at simple interest, and more—$170,000,000—if the interest is compounded. It involves the public interests connected with the transportation between two oceans. It comprehends a trust of unexampled magnitude. It is bound up with the question of the power of Congress to restrain and control its great railroad creatures—corporate franchises of gigantic proportions. In its consideration we consider lands by the million of acres and money by the million of dollars. The East India Company, the Hudson Bay Company, and other great artificial bodies known to history are the only illustrations with which adequately to compare these enormous monsters of legislative creation, and yet England dealt with them summarily. These questions have been before us for two years. They have been thoroughly discussed; they are well understood. We should not hesitate to grasp promptly from the Speaker's table this bill so honorable to the Senate, and make secure the vast sums invested by the United States.

From the Senate report of 4th of March last we learn the magnitude of the sums and interests involved. It appears that the Government loaned the Union Pacific $27,236,512. On this the Government has paid as interest $15,969,801. Deduct from these sums added—the interest repaid by half transportation and the balance due the Government January 31, 1878, exclusive of interest on interest, is $38,071,985. These figures are not denied. They are authentic. The annual interest paid by the Government is $1,634,190. There is a prior mortgage of about the same as the Government debt, with interest on this prior lien to the amount of $1,634,190. The total funded indebtedness of this company is $78,733,712. I need not indicate the nature of this indebtedness. It includes a floating debt of less than a million. It can easily be paid. So of the land-grant debt, as is abundantly shown by the government directors' report, (p. 821.) The average net receipts of this road, according to the Attorney-General's mode of computation, is $6,547,149. But the companies endeavor, by a forced and selfish construction, to construe the net earnings to be what is left after paying all its debts and obligations.

This is a flagrant violation of the sixth section of the act of 1862. At any rate, as will be seen, Congress has the right to determine for the future what are net earnings. In determining that, we deduct

in future the operating expenses and interest on the first mortgage. Taking the average net earnings of the past four years this interest and the 5 per cent. would be only $245,661. The right to this should not and cannot be gainsaid. So, too, of the pay for Government services, the half of the average for six years per annum was $421,-311.87. It will increase. On page 5 of the Senate report the statement is made that after paying all the interest and the other half of the transportation service there will be left a dividend of 6½ per cent. of the present market price of the stock, while the United States will get the sum of $1,938,283. This would sink the principal annually only $304,092. Is this a harsh proceeding toward shareholders or the companies?

By similar computation as to the Central Pacific, about the same sum is to be paid into the fund. It is made up on page 8 of the report, at $1,900,000. This, too, will leave handsome dividends for the stockholders. Why, this company has made 10 per cent. dividend on the nominal amount of their stock. After paying into the sinking fund, there will be still 6.4 per cent. dividend on the nominal stock.

Who can complain of any severity in this law? Does the sinking fund do any one injustice, unless it be the United States? It is a sinking fund for all the creditors, and not of the Government alone. It changes no relation of other creditors to the fund. It would act as a chancellor, and marshal the assets and distribute them according to the equities. If the bill becomes a law it enhances the value of the first-mortgage bonds, which are preferred to the United States debt, for it gives them additional security. It is in other respects favorable to the roads. When in any one year 75 per cent. of the net earnings will not be sufficient to pay all the operating expenses and the interest on the first mortgage, an abatement may be made. In no event will more than 25 per cent. be required for that year; neither from the half-transportation account nor the 5 per cent.

The Senate report shows that the companies can pay all the interest to both preferred and inferior creditors, and all expenses, and have dividends for shareholders larger than any other railroads in the United States. They have little floating debt, and as things now go with them they will be richer in money, mines, and franchises than any railroads or corporations ever constituted. The eleventh section gives them time, in case of default, to make good their payments, and is not a harsh provision. Nor is it illiberal in regard to net earnings. As that question as to past earnings is before the courts, the bill accepts the wrong construction of the companies, and seeks only to define the net earnings of the future. Nor is it illiberal as to interest, for it does not compound; and thereby, whatever the right of the Government to interest on interest, the right is not claimed by this bill.

It is not a hard measure on these corporations to require them to make a sinking fund as prescribed by section 6 of the act of 1862. Not a dollar due the Government has been paid. This bill does not compel payment, as it might. It compels the net profits, not as defined by the companies, but as we all know it means—to be laid away in a sinking fund—as security; so that in 1898 the means shall be ready to save the Government from all loss by reason of speculations, insolvency, or other hazards with which the few owners of these roads may becloud or dissipate these properties.

But we are met with the question of reserved power. It would seem that nothing but the enormous private interests adverse to public rights could so distort the meaning of the laws of 1862 and 1864 as

to make them irrevocable. No impartial man, or good lawyer, or honest judge, can doubt for a moment the power of Congress to amend or repeal such laws. It is asserted expressly in section 22 of the act of 1864. There is no question as to our right to add to, amend, or repeal these statutes.

The Supreme Court, in (1 Otto, 350) Union Pacific Railroad Company *vs.* Hall, held that the acts of 1862 and 1864 were to be taken together. But there is nothing in the act of 1864 to abridge, and much to strengthen, the eighteenth section of the act of 1862. It has been seriously argued that the unqualified reserved power to alter, amend, and repeal a charter does not carry with it a power to take away the possession, use, enjoyment, and proceeds of the property from the corporation. In other words, that when power is reserved it is no power at all; that rights are vested beyond the power to control, even when that very power to reserve was a part of the charter. A mere statement of such a *non sequitur* is sufficient to show its sophistry. An unlimited power to amend is held to be limited according to the wishes and interests of those who desire no limitation. I hold that under the power reserved we may make new rules to capture, seize, ay, confiscate these roads; and it is not for the roads to set up any estoppel upon Congress, as the giver of the grants and the dictator of its uses forever. It is sovereignty; not to be abridged or despoiled.

Mr. Jefferson laid down the general proposition in his letter to Madison on the question "whether one generation could bind another?" No society can make perpetual law. The earth belongs to the living. Jeremy Bentham has enforced this principle with invincible sense and logic. But does our Constitution guard these roads against alteration of their charter? Certainly not. The charter was granted under that instrument and is still under it. There is no impediment but our own legislative negative, and that is within our control. Whether the terms of the laws of 1862 or 1864 allowed amendment or not, the right is as indestructible as society.

England has compelled the repeal of charters in the public interest—compelled. Massachusetts, Ohio, and other States have substantially reserved that power. We did the same in our banking law; and in 1870 we exercised the expressed reserved right to cut down the circulation, and without saying "by your leave" to the banks. No one can doubt, who reads the decisions quoted on pages 9, 10, and 11 of the Senate report, the principle that one Congress cannot limit the constitutional power of a subsequent Congress.

Ah! but it is claimed that it is sheer oppression and wrong to impair the grant by amendment and that they cannot be inflicted under the guise of alteration. Oppression to secure one's own! Wrong to exercise the power to make a generous Government safe in its investment! One looks in vain for such insolence and impudence outside of these pampered, law-defying, press-subsidizing, lobby-employing corporations, who for private ends disregard the public good. Who is to judge of the general welfare—the corporations or the conserving power of the Legislature? Are we to be limited in our regulation of these roads to the postal and military purposes, as to which these roads are specifically bound to render service? Why, if it be confessed that for such purposes we are bound to see these roads run honestly and run on forever, why may we not, by securing it against insolvency and even seizing the properties, assure the execution of these postal and military provisions?

I ask on this legal question to insert the report made on this subject from the report No. 459 Forty-fourth Congress first session:

Your committee entertain no doubt of the power of Congress to pass this bill.

By the eighteenth section of said act of July 1, 1862, it is declared that—

"The better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act."

It has been said that this is a very limited power to alter or amend the act, and that the act only authorizes the alteration or amendment in order to promote the construction of the railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (and particularly in time of war) the use and benefits of the same for postal, military, and other purposes. Were this limited interpretation placed on the reservation, it would not, in the opinion of your committee, defeat the bill they report. For, although said roads and telegraph lines have been constructed, yet it is manifest, having reference to their pecuniary condition, that some such measure as that now recommended is necessary in order to keep them in working order, and to secure to the Government at all times the use and benefits of the same. It needs no argument to prove that insolvent railroad corporations, or corporations in danger of insolvency, cannot be relied upon to furnish the Government the benefits contemplated by said act. In view of the liberal aid afforded by the Government to said companies, the objects to be attained by the construction of said railroad and telegraph lines, and the general principle of interpretation of corporate grants of power, your committee are of the opinion that the reservation of a right to add to, alter, or amend the said act ought to be liberally construed for the public benefit.

But whatever may be thought of the reserved right to alter, amend, or repeal in the act of 1862, it cannot be denied that the right reserved in the amendatory act of July 2, 1864, is as broad as words can make it.

Section 22 of this act is as follows:

"*And be it further enacted*, That Congress may at any time alter, amend, or repeal this act."

It has been argued that this right applies only to the act of 1864, and does not authorize any alteration or amendment of the act of 1862. Were this so, it would not defeat the bill of your committee, for it might well be sustained as an amendment to the act of 1864. But when the circumstances of the case are considered, when it is remembered that nothing had been done toward actual construction of said railroads under the act of 1862 and before the act of 1864, that the grants to the railroad companies named in the first act were greatly enlarged by the latter act, that the roads and telegraph lines have been constructed under the provisions of the two acts, and that those provisions were almost inseparably interwoven, it seems to your committee that said acts should be considered as *in pari materia*—as constituting for purposes of interpretation but one act, and that, consequently, the power to alter, amend, or repeal, reserved in the act of 1864, which is the last expression of the legislative will, applies to both said acts.

What, then, is the power thus reserved, that is to say, the general power to alter, amend, or repeal the charter?

It was defined by the Supreme Court of the United States in the case of Tomlinson *vs.* Jessup (15 Wallace, 458) as follows:

"The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders took their interests with knowledge of the existence of this power and of the possibility of its exercise at any time in the discretion of the Legislature.

"The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable, and protected from any measures affecting its obligation."

This decision places the reservation upon its true ground. It gives to the Legislature the right to interfere when the public interests require interference. It preserves to the State control over its contract with the corporators, and the latter, by accepting the charter, agree in advance that such control shall exist. No one will deny that, if the bill now reported should become a law and be assented to by said railroad corporations, it would thenceforth be binding upon them. But their acceptance of their charter, containing the reservations aforesaid, is an assent beforehand to the bill now proposed, or to any similar measure that Congress in its discretion shall deem necessary for the protection of the Government or the creditors of said corporations. (Pa. College cases, 13 Wallace, 213 and 214.) In this latter case the court spoke of the reserved right to alter or amend a charter as a "reservation to the State to make any alterations in the charter which the Legislature in its wisdom may deem fit, just, and expedient to enact."

In the case of Sherman *vs.* Smith (1 Black, 593) the Supreme Court of the United States seem to recognize a right in the Legislature, when the power to alter or amend a charter is reserved, to add to the liabilities of the stockholders. They said:

"Another view of this question, even assuming that the stipulation of the stockholders in the article of association amounted to a contract, is equally conclusive against the stockholders.

"According to the fifteenth section the association was authorized to establish a bank of discount, deposit, and circulation upon the terms and conditions and subject to the liabilities prescribed in this act. It was not competent for the association to organize their bank upon any other terms or conditions or subject to any other liabilities than those prescribed in the general charter. Now, the thirty-second section, which reserved to the Legislature the power to alter or repeal the act, by necessary construction reserved the power to alter or repeal all or any one of these terms and conditions or rules of liability prescribed in the act. The articles of association are dependent upon and become a part of the law under which the bank was organized, and subject to alteration and repeal, the same as any other part of the general system."

In Miller *vs.* The State (15 Wallace, 498) the Supreme Court said:

"Power to legislate, founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such charter, and which by a legitimate use of the powers granted have become vested in the corporation; but it may be safely affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors and for the proper disposition of the assets."

In Holyoke *vs.* Lyman (15 Wallace, 500) the court held that—

"The provision of the Revised Statutes of Massachusetts, chapter 44, section 23, and General Statutes, chapter 68, section 41, declaring that acts of incorporation shall be subject to amendment, alteration, or repeal, at the pleasure of the Legislature, reserves to the Legislature the authority to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the Legislature may deem necessary to secure either that object or other public or private rights."

Many decisions of the State courts might be referred to to the same effect, but it is unnecessary to cite them here. A number of them are cited in Report No. 440 of the Committee on the Judiciary of the House of Representatives at the present session. Your committee would also refer to that report for many important and valuable facts and tables relating to the subject under consideration.

If there was any room for doubt as to the power of Congress when that report was made, it has been completely removed by decisions of the Supreme Court since made in the following cases: Munn *vs.* Illinois, 4 Otto, 113; C. B. and Q. R. R. Co. *vs.* Iowa, *ib.*, 155; Peik *vs.* C. and N. W. R. R., *ib.*, 164; C. M. and St. P. R. R. Co. *vs.* Ackley, *ib.*, 179; Winona and St. Peter R. R. Co. *vs.* Blake, *ib.*, 180; and Stone *vs.* Wisconsin, *ib.*, 181.

Being fully satisfied that Congress, under the reserved right to alter, amend, or repeal the charter of these companies, possesses the right to pass this bill, we do not consider it necessary to say what would be the case were that reservation not in the charter. Had it been omitted, it might still be argued with much force that the power to alter, amend, or repeal legally existed. No State can make a law impairing the obligation of a contract, because that is prohibited by the Federal Constitution.

Because, Mr. Speaker, Congress has given imperial largesses for public purposes, it does not follow that Congress has not reserved her power to control. Otherwise, what consequences would follow? The answer to this is found in the judicious and judicial reasoning contained in the cogent extracts from the Senate report. The committee appointed in 1873 reported that such power existed. The best legal minds have so decided. How, then, shall the power be exercised?

The action of Congress by this bill may not give us all we should have to save public interests; but it does assert unmistakably that no consolidated power liable to be perverted and already perverted, already in full force here in the lobby, and subsidizing the press with venal and selfish devices, seeking political and worse objects with

brazen audacity, that such power shall not be used for mere private or selfish purposes, at the expense of a forbearing and distressed people.

The grants of Congress were for grand, public, continental objects. Let us rescue them while we can. If this bill does not effectuate the object and make the Treasury secure, let us find supplemental means that will do it.

It is a contest between the brawn of this country aided at last by honest brain, and those speculators who have failed in a great trust. I hope Congress will not fail to distinguish where brawn and brain are, and where the corrupt speculation, where the general, commercial, industrial, national, and international interests are, and where the monopolizing and consolidating schemes are, and legislate accordingly.

Mr. HARTRIDGE. I had desired to discuss at some length the question involved in this bill, presenting as they do grave and serious questions not only of material interests and practical purposes, but of legal and constitutional points. But in the few moments which my friend's courtesy allows me I should be unable to do justice to the subject or to myself, and I shall therefore ask the permission of the House to print my remarks and shall confine myself to the simple announcement that I am opposed to the reference of this bill, believing that the people at large through the discussion of it elsewhere have received all the light they desire upon the subject, and that there is hardly a member upon the floor who has not made up his mind how he shall act in regard to it. Under these circumstances, I am opposed to the reference of the bill and am in favor of its immediate passage.

Mr. COX, of New York. I yield now five minutes to the gentleman from Kansas, [Mr. PHILLIPS.]

Mr. PHILLIPS. I rise to say but a few words. I hope the previous question will be sustained upon the bill, and that it will not be referred to the Committee on the Judiciary, for the reason that at this stage of the session every experienced member of the House knows that if the bill be referred to the Committee on the Judiciary it is equivalent to saying that we shall not vote upon it at this session. The bill in brief is a measure to provide for securing the interests of the United States in the amount invested in this road. The Government advanced to the company upon its bond to the extent of $27,500,000. They authorized, by law, the company to issue first-mortgage bonds which came in before the bond held by the United States for the same amount. In addition to this the Union Pacific Railway Company have added to it of bonded debts of various kinds some twenty-two millions more. It was provided that when this company should do the transportation for the Government it should repay to the Government half of all such amounts in payment, or to reimburse it for paying the interest which the Government pays annually upon its bonds.

Every one is familiar with the fact that the company has not paid the amount so required. The company has built it at a nominal cost much greater than the real cost, and has multiplied expenses and run in debt so as to prevent the United States Government from ever recovering any part of the money thus expended. In the report made to the Senate upon this subject I find that if the company was managed with rigid economy the Government is entitled to expect the interest would be paid upon the first-mortgage bond and also upon the bond guaranteed by the Government, and there would still be 4

per cent. left to pay the interest on the stock at its nominal value, and 6½ per cent. per annum on its real value. It is very well known that this company has multiplied its expenditure, that it has so managed its business that if it were permitted to be carried on as it now is a debt of one hundred and fifty millions would be entailed and the Government would realize nothing of what is justly due to it.

This bill is in substance simply a measure by which the United States may step in, which by law it has a right to do through the provisions of the charter which gives Congress the right to alter, amend, or repeal, to provide that the road shall be so economically and honestly managed that the United States shall be so reimbursed in some degree at least. In the name of every just and legitimate enterprise we are called on to see that there is no sacrifice of the just interests of the Government and no sacrifice of the money of the people. Corporations have too long acted defiantly of law, and it is time they should be placed under its just restrictions. The bill is therefore eminently just; it is one that we as representatives of the people are called upon to vote for; it is one that will not cripple the road, if there is any fair effort to manage the road honestly and economically, and I hope the House will speedily pass it. It has been carefully considered by the Senate Judiciary Committee, a body of eminent lawyers; has been before Congress before, and I hope that its opponents will not shelter themselves by motions of delay. The unanimity of support it received by the Senate, and which I hope it will receive in the House, is one of the wholesome evidences that the power of corporations over legislators no longer exists.

Mr. GARFIELD. I desire to put a question to the gentleman from New York, [Mr. Cox.]

Mr. COX, of New York. I will hear it.

Mr. GARFIELD. I conceive that it is exceedingly important that a sinking fund for paying the indebtedness of these roads to the Government should be established. There is a great danger that spoliation and waste may come if we wait for the maturity of the bonds; but the thing I want to ask of any gentleman who may speak is this: are we sure that the bill here drafted and now before us is one that will stand the pressure of the courts and accomplish its object? I desire information on that point. We have had great misfortune in our legislation heretofore in this respect. I believe the United States has been beaten in almost every appeal to the courts in the legislation that we have passed in the attempt to limit and restrict the power of these roads and to protect the interests of the United States.

Now I desire very much that some gentleman who has studied this bill, as I have not, shall say to the House clearly, and give the grounds for it, that this bill is in a shape where we can safely trust the cause of the United States in the courts.

To make sure of this it seems to me that it would be safer to refer the bill to our Law Committee, with authority to report it back at any time; and unless that committee has considered the question and made up its mind that the bill will meet the objects we desire to reach, it ought to be so referred. But if it will secure the objects set out in its provisions, and secure them by means of the courts, then this bill should certainly receive the approval of a majority of this House. That is the simple question which I desire to ask.

I desire to say now that I am paired with the gentleman from Virginia [Mr. TUCKER] during his absence; and as I do not know how he would vote on this bill if he were present, I shall withhold my vote.

Mr. COX, of New York. I do not intend to take up any time in reply to the question of the gentleman from Ohio, [Mr. GARFIELD,] except to say that eminent lawyers of the Senate, including an ex-judge of the Supreme Court of the United States, have stated that they thought this bill would hold water in any court. I will not set up my legal opinion after the opinion which has been given.

Now as to the disposal of the time. I propose to hold the last ten minutes for this side of the House, and will yield twenty minutes to gentlemen on the other side.

Mr. BUTLER. Pardon me; no man has spoken against your proposition yet that I have heard, and I agreed with you that those opposed to passing the bill at this time should be allowed thirty minutes.

Mr. PRICE. I ask to be allowed five minutes on this bill.

Mr. COX, of New York. I was about to say——

Mr. BUTLER. If we are to be allowed half an hour——

Mr. COX, of New York. I will yield to the gentleman from Massachusetts [Mr. BUTLER] one-half of the hour, if he will settle the question with gentlemen on that side of the House.

The SPEAKER *pro tempore*, (Mr. VANCE.) There are only thirty minutes of the hour remaining.

Mr. BUTLER. Exactly; that is all I want.

Mr. COX, of New York. A great deal of the first half of the hour was taken up by preliminary discussion.

Mr. BUTLER. I hope that every one will consent that ten minutes additional be given to the gentleman from New York, [Mr. COX.]

Mr. BEEBE. I ask unanimous consent that the time for debate be extended ten minutes, so that the gentleman from Massachusetts [Mr. BUTLER] will have thirty minutes, and that ten minutes be allowed to my colleague, [Mr. COX.] And I give notice that I shall object to any further extension of the time after that.

The SPEAKER *pro tempore*. That requires unanimous consent.

No objection was made, and the time was extended accordingly.

The SPEAKER *pro tempore*. The gentleman from Massachusetts [Mr. BUTLER] is recognized as entitled to the floor for thirty minutes.

Mr. BUTLER. I yield five minutes to the gentleman from Iowa, [Mr. PRICE.]

Mr. PRICE. I have very little to say in reference to this bill. I will commence by saying that if the bill comes to a vote in its present shape I shall vote for it; but I shall regret very much being compelled to do so, for the reason that I have examined this bill carefully again, again, and again, and I undertake to say now without fear of successful contradiction that the fourth and fifth sections of this bill can be interpreted to mean two diametrically different things. If they shall become law they will open the door for just such litigation as we have had in the courts in years past in regard to these corporations. For that reason I thought and still think that this bill should go to the Committee on the Judiciary to be examined in reference to these matters so as to make the language of those two sections free of the ambiguity that now certainly attaches to it.

Gentlemen upon this floor know full well without my saying it that we are brought every now and then face to face with a proposition upon which we are compelled to cast our votes, and there is very great doubt in the minds of many gentlemen upon this floor how those votes should be cast. It is not a singular thing; but very frequently men on both sides of this Chamber are compelled by the rule

of the House to vote upon a proposition when they are not certain whether the votes they give are in accordance with right and justice or not.

Now, I do not want to delay action on this bill. I am as anxious as any other gentleman upon this floor to get through with the legislation that is pressing upon us and to adjourn this Congress. And if the bill was right, or as near right as it could be made in my judgment, I should say that we should vote upon the bill as it is.

But believing as I do that it ought to have consideration by the Committee on the Judiciary, particularly in regard to the two sections to which I have referred, I must vote against the previous question so as to obtain a commitment of this bill. I might say in the language of another, familiar to us all, "if it were done, when 'tis done, then 'twere well it were done quickly." But the fear with me is that when we have done this it will not be the "be-all and end-all" of the matter, but it will come up in the courts in the future as in the past, especially in regard to these two sections.

Now, I make this prophecy, and I want gentlemen to mark it: if this bill shall pass in its present shape, I will risk all the judgment I possess upon railroad matters, and all the ability I have upon any question, that it will in the future, as it has in the past, give rise to litigation. For that reason and that reason alone I want this bill committed to the Committee on the Judiciary, so that they may examine these two sections particularly, and take from them the ambiguity and uncertainty which I believe is now in them, and give us a bill about which there will be no question; so that the Government will know what it has, the railroad companies will know what they have to do, and there will be no ground for litigation in the future upon these points.

Mr. HENDERSON. I hope my friend from Iowa, [Mr. PRICE,] if he has time, will point out the ambiguity of which he speaks, so that we may know what he means.

Mr. PRICE. The ambiguity is simply that sections 4 and 5, particularly section 4, are liable to two interpretations in reference to the sinking fund, in reference to the 5 per cent. and the half that is due from the road and the 25 per cent. No man can tell whether that provision means one thing or another. I have not time, in my five minutes, to go into a detailed statement; if I had half an hour I might do so.

It has been urged as an objection to the reference of this measure that the Judiciary Committee will not have an opportunity to report it. Sir, that committee, judging from the course of business in this House during the last two weeks, will probably be called within the next two weeks. There are only about three committees ahead of them after the Committee on Commerce shall have concluded its reports. The Judiciary Committee will have ample time to examine the bill and report it back on the regular call of the committee, and no interest can suffer from this delay.

[Here the hammer fell.]

Mr. BUTLER. Mr. Speaker, I desire the ear of the House for the few minutes I have to speak. I shall not undertake to discuss the provisions of the bill. In the other branch of Congress it was discussed for weeks with great ability on the one side and on the other; but it was a discussion of generalities; there was no discussion such as this House gives to a measure when considering a bill section by section under the five-minute rule. I add my prediction to that of the gentleman from Iowa, [Mr. PRICE,] that this bill will not "hold

water." The very men who drew it up were fearful that it would not "hold water," for they undertake to fix by legislation what the court shall do and how it shall decide. If I were a judge and such legislation came before me, I would say, "The legislative and the judicial departments of this Government are independent; the legislative department cannot legislate as to what the judiciary shall do or say." If that can be done the judiciary is gone. Observe this provision:

> It shall be the duty of the court to determine the very right of the matter, without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to.

"Joinder of parties!" In other words, the court, in making a decision which may affect the rights of citizens or of the Government to the extent of millions, shall not see to it that proper parties are before the court. If the proper party is not before the court, the court is still by this bill ordered to go on and make adjudication without reference to that fact. Well, sir, unless the action of last winter has debased and debauched the Supreme Court far below what I believe it is and ought to be and ever has been, that court will throw this legislation back in your faces and say, "You cannot control our judgment by legislative direction; it is your part *jus dare*, it is ours *jus dicere;* you may make the law, but we must determine under the Constitution its construction, and to determine the rights of parties under the law, when, and when only, the party to be affected by our decision is properly before us."

But this is not for discussion now. It will be remembered that I stood here a short time ago one of an overwhelming majority of this House in the matter of the remonetization of silver and demanded that the House should consider that bill for itself. A panic had then seized the majority as it has now, and they would not listen to a single amendment or even to a consideration of the bill. The cry was, "Let us take what we can get now, and get what we can afterward." To that majority of three-fourths I said, "Let us stop and consider; this is the only bill we shall pass on the subject; let us get it as perfect as human ingenuity and human learning can make it, so that it may be a measure of relief to the financial distress of the people." But my appeal was in vain. Although the bill had been passed under a suspension of the rules in the House without debate, it was urged that it had been debated in the Senate, and that the Senate had got it just right. So men rushed like sheep over a wall, but without a leader, for they had no leader—rushed to make that silver bill a law. But, "like Dead Sea fruit which tempts the eye, it turns to ashes on your lips." The silver bill is not worth, for the purpose for which it was passed, the paper on which it is printed. By the Senate amendments to that bill all the relief to the people promised them by Congress to be given them by the bill was struck out.

Again, the gentleman from New York, [Mr. COX,] who is so anxious now to pass this bill without a word of debate except what he has written out and printed, occupied the time of the House all day yesterday to argue a bill after it was passed—to kick a dead horse—and his thesis was the danger of passing a bill involving $7,000,000 without debate. Yet he tells us that this bill involves $150,000,000, and we are not to debate it at all, for an hour's debate is naught; in that time members cannot even read the bill. Now I will venture to say, and I put it to the conscience of each man here, there is not a man of you that knows what is in that Senate bill that you are going to vote upon.

Mr. MORRISON. The gentleman is mistaken about that.

Mr. BUTLER. I am quite sure that I am nearly right. Gentlemen here do not spoil their eyes by reading written documents, and this bill has not been printed as it lies now on your table. I ask no man to accuse himself before the House, but how many of you have read that long written bill? There may be two or three, but I should be willing to be stoned by each of you who would get up and on your honor aver that you had read the bill on the Speaker's table, just as it stands, every word of it. I think I should be the safest man in the House.

Mr. CRITTENDEN. You have the "bricks" in your hat; we have not any.

Mr. BUTLER. Precisely so. But there are no "bricks" hard enough to throw at those who are in such a hurry to pass this bill.

Now, Mr. Speaker, I ask gentlemen to pause for another reason. I cannot discuss this bill. I should vote for some sinking-fund bill. I believe in dealing with this question. I believe in the right of Congress to deal with questions about these roads within certain limits; and I do not know but that this bill is within those limits. But I was amazed, nay, I was more than amazed, I was shocked, when I heard the learned and eloquent gentleman from New York, speaking of the railroad riots of last summer, say that they involved the loss of some $10,000,000, the result of the "wild justice of the people." Gentlemen, do you follow that lead? Do you say that a strike which was organized by train hands of the railroads, because they were deprived of their fair wages for their labor, and was carried out finally by others in robbery, rapine, arson, murder, and death—destroying not only railroads but other property—do you agree that such acts are the "wild justice of the people," or only spoliation and robbery? And are you acting under the spur of that occasion in depriving these railroads of their property?

I do not agree to another thing which the gentleman has said, that Congress has the right to proceed "even to confiscation" of the property of these roads under the words "alter, amend, and repeal" a charter. None of your property is safe under such an interpretation. And here we are, without consideration, without reference of this question to the appropriate committee, about to pass upon these grave questions; true this Pacific Railroad Committee say they have examined it while upon the Speaker's table, but I am certain they examined it with clean hands, for if you look at the paper on which the bill is written you will not find a single finger-mark where they have turned over the leaves; but they say they have examined it.

Mr. DICKEY. Will the gentleman allow me to ask him a single question?

Mr. BUTLER. Yes, if it be not long.

Mr. DICKEY. It will not be a long question.

Mr. BUTLER. Very well, go on.

Mr. DICKEY. As I understand it, you are in favor of some measure requiring the settlement of this indebtedness.

Mr. BUTLER. I am.

Mr. DICKEY. Does not the gentleman believe these roads will litigate any measure Congress may pass, and delay and fight us in every effort to make them come to a settlement?

Mr. BUTLER. The gentleman's question, when resolved to its simple elements, is this: Do I believe these roads belong to men who act from selfish motives? Yes, I do.

Mr. DICKEY. So that any action on the part of Congress will be litigated by them and defeated if possible?

Mr. BUTLER. I should think it would. I believe it would, and if you had seen Congress as they have seen Congress year by year pass laws which when brought before the Supreme Court were decided to be utter nullities, you would be encouraged as they to keep on litigating the laws passed against them in the same way for the future. When they see Congress pass a law involving money, millions of property, without even referring it for revision to so poor a committee as the one I have the honor to be on, I should advise them, if they ask me to do that, to litigate this law, because we have never considered it; no one in the House knows anything about it; no one even debated it. I should not say there were ten men in the House who read the bill. There were not ten lawyers who read the bill at the time they voted on it, and they knew nothing of what was in it. And were I the court, when I came to consider it as a judge I would say we are not to attach much weight to the provisions of this bill, as it was passed without debate or consideration, it was passed without examination by the law committee of the House, as it was passed in the Senate on general debate only; therefore we are at liberty to use our own judgment as judges about it.

Do you want to vote this bill, as you are called on to do, as an act of "wild justice and confiscation?" Are these roads open to that? There are a great many things which can be objected against them. They are very open to objection and many of their acts are not well, but no such penalties as these can by you be enforced upon them. But it is objected they have paid no money into the United States Treasury in accordance with their charter. Why? Because the Supreme Court of the United States said there was no clause in the act by which they should pay anything. Do you expect anybody, railroad men or others, to pay money that is not due under their contract, and which the United States courts say is not due? You say now they shall pay it in. That you perhaps may do. But what I say now is this, and I tell you, gentlemen, what I want: I want, if possible, to have a bill you cannot drive a coach-and-four through in double harness. That is the kind of bill I wish. The best legal minds in this House—and there are some as good on the other side of the House I know, for I have met them, as there are in the land—I want their examination of a bill to adjust its provisions so that litigation may be avoided. Something was said about this bill having been examined in the Judiciary Committee. It was never read in the Judiciary Committee, and no session of the committee was ever held in which its provisions were discussed for an hour—not for a moment. Therefore we stand here without any examination of the bill. What is the use of us two hundred and eighty men if we are to vote a bill just as the Senate send it to us? Where is the old democratic pride for the independence of the House against the property-representative body, the Senate? You lie down before them, and a republican Senate, too, like whipped spaniels whenever they pass a bill. They sent you a silver bill and you gobbled it up as a duck would a frog. [Laughter.] They send you a funding bill and you jump at it as if you answered the dictate of your candidate for the Presidency.

Now, then, I want to say a word about those Pacific roads. As I have said they are human institutions, but this country owes them a debt of gratitude even if they should run away to-morrow with all they have received. I know some of you on the other side do not feel that debt of gratitude as strongly as I do; but in 1862 the future of the country was a little dark up here, and it was still darker on the southern border. A cloud no bigger than a man's hand was rising

in the West. The doubt was whether California and the Pacific States would not come to think it best to set up for themselves an empire on the western ocean, and, as a war measure, as a measure to bind this country together with chains of iron and hooks of steel, we passed a Union Pacific Railroad bill, and a Central Pacific Railroad bill, and gave this Pacific Railroad endowments out of our Treasury when the very life-blood and treasure of the country was pouring out like water. We did it as a war measure to bind the North together from ocean to ocean, and it was a very successful measure. We did it to show you, my friends on the other side, that we meant business, and that we could carry on this Government and preserve our work with one hand and fight you with the other besides. We did it for the same reason that, when taxes were piling up on us—step by step, up, up, up—we went on with the building of this Capitol, appropriating year by year a half million of money; although we needed every dollar for war purposes and our currency had gone down to thirty cents on the dollar, we still steadily piled up the stones of these wings of the Capitol, in one of which I am now speaking, although the war was going on. And why? To show you that we meant business and that we felt ourselves strong enough to build a road to connect two oceans and build a Capitol which should be more grand and magnificent than any other public building of its kind on the surface of the earth.

Now is it possible that, without any thought or consciousness on the part of a portion of you, enmity—hostility will be a better word, want of confidence a better word still, for I do not mean to say anything harsh—toward these roads may arise from a little feeling about these roads being built at that time out of that money, the proceeds of the public lands, and would now in part be yours, and these roads are of no use to you? Do not you southern gentlemen want me to vote for a Texas Pacific road so as to make this matter equal for your section? I shall anyhow, whether you vote this bill down or not, because I go for fair play now that you are back with us. We gave away part of the public lands for this road and I am willing to give part of the public lands for the other. I mean to be fair if I know how. I wish to act with all fairness and justice. But I say look into your heart of hearts and see if part of your hostility against these roads is not your determination to crush even to confiscation the property of these roads. The managers of this have been too shrewd to put forward anybody from the South to say that; nobody down South talked about the "wild justice" of the people when depots were burned and men were murdered; but I say is it not the fact that a part of the hostility arises because the building of these roads was the most efficient of all the most efficient instruments in binding this country together at a time when everything seemed to go asunder?

Now, why treat this great measure differently from what you would any other measure? Why not let it be examined? There is no such haste about it. You have got a majority. What do we ask? Simply that a committee, on which you have got a majority, shall examine the bill—a committee, too, a majority of whom do not want to examine it. I do not for one, but I think it due and right to advocate this course as I did on the silver bill. What do we ask? We ask you simply to let us examine this great measure covering millions. Let us have it examined by a committee, let us have it debated a reasonable time in the House, every objection being brought against it that can be, and then pass it.

I want but one thing more. I want this bill when so perfected to

be a finality when it is done. I want to get a bill that will be final against the railroad, and which you will make final against yourselves. Stop the lobby——

Mr. BRIDGES. Will the gentleman allow me to ask him a question?

Mr. BUTLER. Certainly.

Mr. BRIDGES. The gentleman has asserted this bill has not been considered in the Committee on the Judiciary. Is that the fact?

Mr. BUTLER. It is. It never has been read in the committee. It never has been in the committee. Not a copy of it to-day is to be found in the committe-room or in the drawer of any member of the Judiciary Committee in this House.

Mr. ITTNER. I desire to ask the gentleman a question.

The SPEAKER *pro tempore*. Does the gentleman from Massachusetts yield.

Mr. BUTLER. I will for a moment. I believe I have five minutes more.

Mr. ITTNER. I ask the gentleman from Massachusetts if the only reason he has for asking this bill to go to the Committee on the Judiciary is to perfect it and if he is in favor of the main principles of the bill.

Mr. BUTLER. I have already said I am in favor of the main principles of the bill; and I was saying when I was interrupted, before my friend asked the question, that whenever you pass these main features of the bill to indemnify everybody rightly and get it so it cannot be interfered with by the courts and then say this shall be final on this subject I will vote for it; but I will not vote for any man's property to be confiscated either by a republican Congress or by a democratic Congress whenever a lobby thinks it can make money by so doing or some dishonest servant of the company chooses to make charges against it, because no property is safe against such attacks as those.

I do not believe in the "wild justice" of the people. I do not believe that Congress is any better than the rest of the people; and I do not believe that Congress has a right to reserve the power of confiscation under the phrase "to alter, and amend, or repeal" the charter or to give the right of confiscation under our form of government. I will vote for a bill to put aside a proper amount to secure the mortgagees. I do not say this is not a proper and fair amount, carefully guarding other things; and let this thing be settled forever and I will give the best talent I have as a lawyer in perfecting such bill so that no court can find fault with its provisions.

One thing further. Do gentlemen remember——

[Here the hammer fell.]

The SPEAKER *pro tempore*. The gentleman's time has expired.

Mr. WRIGHT. I ask unanimous consent that the gentleman be allowed ten minutes more.

Mr. FINLEY. I object.

Mr. WRIGHT. The objection comes too late.

The SPEAKER *pro tempore*. It was heard by the Chair in time.

Mr. BEEBE. I do not mean any discourtesy to the gentleman from Massachusetts, but when the original extension of ten minutes was made I gave notice that I would object to a further extension of time, but I think I can stand ten minutes more if that will be satisfactory to the gentleman.

Mr. BUTLER. I do not want to wear on the constitution of the gentleman from New York any more, but I warn him that he has a

great deal to stand in the heat of the weather before we get through.

Mr. BEEBE. The gentleman refers to my constitution, and I insist upon my rights and object to a further extension of time.

Mr. STEELE. I also object and shall insist upon the objection.

Mr. COX, of New York. The gentlemen on the other side of this question have already occupied half of the time. The gentleman from Massachusetts complains that these things were done in war times. The act of 1864 giving priority to the twenty-seven-million mortgage bonds was passed during our troubles in the civil war. This bill has been pending for years. It has been upon the Speaker's table for over two weeks, and we all understand it; it is not a snap judgment on the House. I now yield five minutes to the gentleman from Mississippi. [Mr. CHALMERS.]

Mr. CHALMERS. I cannot undertake to discuss this question in five minutes. I thank the gentleman from New York for his courtesy, but will not avail myself of it for the purpose of discussing the bill. I could not undertake to discuss this question in five minutes and therefore I do not desire to enter upon any constitutional argument, but at the request of a colleague upon the Committee on the Pacific Railroad I desire to make this statement. A bill almost word for word as this which now comes to us from the Senate was examined and considered in the Committee on the Pacific Railroad, a committee which has upon it I believe lawyers of long standing, perhaps of as much standing as those who have the honor to be upon the Judiciary Committee, and I say that if this bill is committed or referred to any committee it should go to the Committee on the Pacific Railroad, and not to the Committee on the Judiciary. Sir, by the rules of the House the Committee on the Judiciary is only authorized to consider matters touching judicial jurisdiction and decisions. This question was sent to the Committee on the Judiciary in the Senate by a resolution. It went to the Committee on the Judiciary of this House in the Forty-fourth Congress by a resolution directing them to inquire into legal questions involved in the resolutions. From that grew up the bill. But the bill itself is a bill in regard to Pacific Railroads, and it should be properly referred, if at all, to the Committee on the Pacific Railroad. A similar bill has been referred to that committee and thoroughly considered by men who have some standing as lawyers at home, if not in this House. They have reported it almost unanimously, and therefore I think that it is almost treating that committee with contempt for a gentleman to rise and say that the House has not considered the question at all. The gentleman from Massachusetts might well say that he had not considered the subject, for he showed it by the first argument he made, that it proposed to take money from the Government, and a member of the Committee on the Pacific Railroad [Mr. MORRISON] showed that he did not understand the bill. He had no idea what was in it so far as he was concerned, and he has rightly said that he as one member of the House did not understand it.

Mr. BUTLER. Will the gentleman allow me to ask him a simple question?

Mr. CHALMERS. Certainly.

Mr. BUTLER. Did you read this bill in print or in manuscript?

Mr. CHALMERS. We read it in print?

Mr. BUTLER. It has never yet been printed, as it now lies on the Speaker's table; never.

Mr. CHALMERS. I say to the gentleman that, with the exception of some few verbal changes, this is the very bill introduced by my-

self, considered by our committee, and reported to this House. When the gentleman talks about this bill undertaking to dictate to the Supreme Court what they shall decide, it simply indicates that gentlemen like himself shall not be employed by these railroad companies to take advantage of legal technicalities. The bill says it shall be decided in the courts upon the very right of the case. When was it ever known that a law of that kind was either unconstitutional or ill-advised or was attempting to dictate to the courts? It is but a matter of pleading and practice, a practice adopted in many of the States. When important questions are to be decided, in the decision of which a large number of interests are involved, just such language is used: that no technical exceptions shall be taken on account of multifariousness, on account of parties, or anything of the kind, but the courts shall go to the very right and justice of the matter. That is all there is in it to which the gentleman now excepts.

I say to the gentleman that the whole spirit of this legislation is in the line of that which is sought when we have not a remedy for the evils of to-day, and Congress or the Legislature is called upon to provide a remedy. Here is a corporation growing in debt which at maturity will amount to $177,000,000. The country has as security for that debt a second mortgage on about two thousand miles of road, or $88,500 per mile.

No gentleman will pretend that this is security for the debt. Railroad men contend that a better new road could now be built for half this price. The stockholders are growing rich on the dividends they make annually to themselves. The Government and the people without some such legislation as this at the end of twenty years will be left without remedy for their money.

[Here the hammer fell.]

Mr. COX, of New York. I now yield to the gentleman from Illinois, [Mr. SPRINGER.]

Mr. SPRINGER. I shall give this bill my cordial support. It is important that it should at once be put on its passage without reference to a committee. It has received a most careful consideration in the Senate, and after one of the most learned and exhaustive debates on record has passed that body by a most decided majority. Perhaps there is no measure that will be considered this Congress which is of more consequence to the people than this bill. Its passage is a striking evidence of the fact that the power of the people is at last greater than that of the corporations. Having passed the Senate by a large majority, I hope this House will show that it is equally in earnest on this subject, and that the bill may pass here by such a majority as will make a veto unavailing. I believe it will pass. Its provisions are just to the railroads and at the same time fully secure the rights and protect the interests of the people.

For many years the people have looked in vain for some legislation in their interest. It is to be regretted that for fifteen years past the majority of the legislation of Congress has been in the interest of the protected and favored few at the expense of the great mass of the people. But now there is a change, and that, too, for the better. The people can now have their fair share of the benefits of wise legislation, and therefore I hail the passage of this bill as the dawn of a political millennium.

One word in reference to the fifth section of the bill and I will yield the balance of my time to my colleague [Mr. MORRISON] who is a member of the Committee on the Pacific Railroad and has much more carefully considered the subject than I have. The fifth section

is apparently in conflict with the first section of the bill, in this: that upon a casual consideration there may be other liens recognized as prior to that of the United States than the first-mortgage bonds of the roads. A careful examination of all the provisions of the bill will show that this is not the case. The first section of the bill clearly indicates what lien shall be regarded as prior to that of the United States, in defining what shall be regarded as the net earnings of the road. I refer to the following provision in section 1:

That the net earnings mentioned in said act of 1862 of said railroad companies respectively shall be ascertained by deducting from the gross amount of their earnings respectively the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness.

If this section be compared with section 5, the apparent inconsistency will be seen. Section 5 is as follows:

SEC. 5. That whenever it shall be made satisfactorily to appear to the Secretary of the Treasury by either of said companies that 75 per cent. of its net earnings, as heretofore defined, for any current year are or were insufficient to pay the interest for such year upon the obligations of such company, in respect of which obligations there may exist a lien paramount to that of the United States, and that such interest has been paid out of such net earnings, said Secretary is hereby authorized, and it is made his duty, to remit for such current year so much of the 25 per cent. of net earnings required to be paid into the sinking fund, as aforesaid, as may have been thus applied and used in the payment of interest as aforesaid.

There can be no obligations paramount to that of the United States, according to section 1 of the bill, except the amount necessary to keep the road in repair, to pay running expenses, and the interest on the first-mortgage bonds. I called on the author of this bill to-day, and asked an explanation of this apparent inconsistency. He informed me that section 5 was in the original bill as referred to the Committee on the Judiciary in the Senate; that section 1 as it passed was an amendment to the original section as referred; and that in the first section of the original bill the words "and also the sum paid by them respectively within the year in discharge of interest on their first-mortgage bonds, whose lien has priority over that of the United States" did not appear. After these words were inserted in the first section, then there was no longer any use for the fifth section. Hence the latter section may be considered as out of the bill. It forms no part of it as it now stands, and is mere surplusage. This explanation leaves the bill free from all ambiguity or possibility of misconstruction hereafter. I yield the remainder of my time to my colleague, [Mr. MORRISON.]

Mr. MORRISON. The purpose of the bill under consideration is to secure repayment of the money paid and to be paid by the Government on its bonds issued to aid the construction of the Pacific Railroad. Besides the grant of corporate powers, valuable franchises, and lands equal in acres to the seven smaller States of the Union, made by the acts of Congress of July 1, 1862, and July 2, 1864, the Government issued and delivered to the Pacific Railroad Companies bonds amounting to $64,623,612 upon which we pay, and must continue to pay for thirty years from their date, interest exceeding $3,000,000 per annum after deducting what the Government now receives from the railroad companies. We pay this excess of $3,000,000 interest semi-annually, but it is to be repaid to us only at the maturity of the thirty-year bonds at which time principal and unpaid interest will far exceed the value of the railroad and property on which the Gov-

ernment has only a second lien, the railroad companies having issued, and secured by a first lien or mortgage, their bonds equal in amount to the bonds so issued to them by the Government. In short, without some amendment to said acts of Congress so controlling a portion of the earnings of the roads as to make such portion of their earnings applicable to the payment of the bonds issued in aid of the roads' construction, the money so paid and to be paid by the Government, amounting to many millions, will be lost.

What was the nature and purpose of this transaction and what are the relative rights of the Government and railroad companies under it? Certainly the Government did not issue and deliver its bonds to the railroad companies as an investment, for the Government was then a borrower, and the money paid for the railroads applied to its own obligations would have saved a hundred and fifty millions of dollars, even if the money and interest paid shall be refunded when the bonds are payable. Neither were these bonds issued as a donation, else it would not have been enacted in section 6 of said act of 1862 and section 5 of said act of 1864 that said companies might pay "in the same or other bonds, Treasury notes, or other evidences of debt of the United States, to be allowed at par;" that after said road should be completed "at least 5 per cent. of the net earnings" annually and half the compensation for services rendered the Government should be applied in payment until the whole amount of said bonds and interest is fully paid.

The national and public purpose of Congress in affording aid in building their roads by issuing bonds to said companies, as expressed in said acts, was "to secure to the Government at all times, (but particularly in time of war,) the use and benefit of the same for postal, military, and other purposes."

By the provisions of said acts, as well as from the reason of the thing, the Government had a right to have the roads kept in repair and use and to have preference in their use for the transportation of its mails, troops, and munitions of war for reasonable rates of compensation. For these purposes the railroad companies were the agents of the Government which gave them corporate existence, life, and sustenance. For these purposes they were instrumentalities which by the law of their creation the Government had a right to use. The power to enforce such a right would seem necessarily to go along with the right itself, but that there might be no misunderstanding about it Congress reserved to itself the right to "at any time alter, amend, or repeal" said acts.

That this expressly reserved power to amend, alter, and repeal may be exercised at any time to secure to the Government at all times the transportation of mails, troops, and public stores, does not appear to be seriously questioned. Whatever opinions may have obtained in the past, now it is conceded apparently by the most strenuous advocate for the sacredness of vested rights that State Legislatures, as to corporations chartered by them, have, and that Congress, as to corporations chartered by it, has, power to compel corporations to do that for which they were created and for which they have been invested with a portion of the sovereign power; but it is insisted by the opponents of this bill that neither payment of debts nor keeping obligations to refund what has been advanced in the construction of their roads is among the duties which such corporations may be so compelled to perform.

When we would so amend said acts as to enforce the duty to carry the mails, troops, and stores of the Government we are admitted to

be in the just and proper exercise of the reserved power of amendment. When we would so amend as to compel the application of a part of the road's earnings to the repayment of money which went into its construction, without which there could be no earnings, then it is insisted by the opponents of this measure of justice and fair-dealing that we are breaking faith, impairing the obligation of contracts, and violating the Constitution.

The companies have a property in the franchise and road with which they earn money no less inviolable than in the money earned, and it is difficult to conceive a legal distinction in the exercise of the reserved right of amendment applicable to one and not to the other. The law itself makes no such distinction. Yet upon such distinction is based the argument advanced here and elsewhere that Congress, seeing the affairs of the road so administered as to endanger the right of the Government at all times, and especially in time of war, to have its troops and stores carried, may rightfully exercise its reserved power to amend or repeal the franchise, and may put the roads out of which come all the earnings into other hands; but that, seeing the earnings so misappropriated as to necessarily result in a loss of the Government advancements, Congress cannot so exercise its reserved power of amendment as to compel such just administration of the corporate rights conferred as will prevent such loss.

It is further said that this advancement of bonds was a mere contract of loan between the Government and railroad companies with the terms of payment unalterably fixed in the law itself, which exempt it from the power of alteration and amendment reserved in the same law; that while Congress has power to "borrow money on the credit of the United States," no power has been conferred to lend money. That it may and does borrow, therefore, as a sovereign, but can, like a bank or insurance company, only lend as a civil corporation.

Now, sir, I will not waste words to show that if power has not been conferred on Congress to lend money, then it cannot lend either as a civil corporation or a sovereign. I have already said that the Government did not issue and deliver its bonds to the railroad companies by way of investing the many millions of dollars it thereby obligated itself to pay for them while it was itself a borrower. Nor, sir, was it done as a loan. The Government exercises the power to build military and post roads through the instrumentalities of private corporations or otherwise, to provide for the common defense and promote the general welfare—if rightfully at all—as a sovereign. As a sovereign and to attain the purposes enumerated in said acts of Congress it created one corporation, recognized others, and issued and delivered the bonds as a means and incident to the end for which the sovereign power was exercised. This is true, or the whole transaction was without warrant in the Constitution. And so, Mr. Speaker, the effort to so divide the contract between the Government and its agencies as to limit its power of amendment, unlimited in the terms of the law, to the control of the franchise and the road, and forbid it as to the road's earnings, must fail, it seems to me, for want of law as well as lack of justice to support it. The reserved power to alter, amend, and repeal may be invoked to secure such a just and equitable administration of the affairs of the companies and such disposition of the earnings as will protect and enforce all the rights of the Government and the people. And I so understand the law to be interpreted by the courts as declared in Tomlinson *vs.* Jessup, 15 Wallace, 458:

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prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable, and protected from any measures affecting its obligation.

And in Miller *vs.* The States, 15 Wallace, 498:

Power to legislate, founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such charter, and which by a legitimate use of the powers granted have become vested in the corporation, but it may be safely affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors, and for the proper disposition of the assets.

And by the whole current of authority as shown by numerous cases cited in its support at both ends of the Capitol pending the consideration of this question. And so, too, it would seem the railroad companies understood the law. It was shown by a report of a committee of this House in the Forty-third Congress (the Credit Mobilier investigation committee of which Hon. Jeremiah Wilson was chairman) that the Union Pacific Railroad and the Credit Mobilier were "identical in interest;" that Credit Mobilier stock paid dividends of 300 or 400 per cent.; and that the agent and representative of the railroad went about the Senate and House of Representatives distributing this stock among Members and Senators. Railroad companies are usually so managed as to get money for those who manage them, and yet it did appear that in this case they believed they put this valuable stock "where it would do most good" when so distributed. The railroad acts had been passed; the grants had been made; the bonds had been issued; what other "good" was to be obtained by so distributing Credit Mobilier shares but congressional forbearance in the exercise of the right to so alter and amend said acts as to compel the companies to surrender a part of their earnings in repayment of what the Government has advanced for them?

This reserved power to alter and amend has been exercised in relation to the national banks when some of them have been compelled to surrender part of their circulation, to which they had a right under their charters. It is by the exercise of this power alone that they can be compelled to surrender their circulating notes before the expiration of their charters.

Good faith, it is said, requires that we should forbear the exercise of the power of amendment until the railroad companies are in default, and that they are not and will not be in default as to repayment of the money paid on the bonds issued to them until their maturity. The ablity of the roads to pay is not and cannot be disputed. Yet Mr. Dillen, representing the Union Pacific, more than three years ago advised us of his purpose to pay in his own good time and upon his own condition when in a communication to the Secretary of the Treasury making an offer of adjustment wholly inadequate he said:

The bonds are accumulating an interest account, also uncollectible until the principal is due. Principal and interest, when due, will amount to the very large aggregate of over $77,000,000.

For this very large amount the Government has only a second mortgage, and if it be allowed to accumulate without any provision being made to meet it, the company will probably be utterly unable to pay it.

At the same time it is equally manifest that the Government will be unable to collect it, except upon the assumption that it will advance the money to discharge prior mortgages and run the road on Government account—a policy which wise statesmanship could not advise.

Mr. Huntington, on the part of the other road embraced in the fund-

ing bill, the Central Pacific, advised us of a similar purpose on the part of his company when referring to principal and interest of the bonds. He said to the Senate Judiciary Committee:

> By the time both mature and become payable it is not at all likely the property will be worth their aggregate sum, and if the shrinking and settling of prices should continue further it may happen that it will not suffice to pay more than the first mortgages.

With the ability to meet their engagements and notoriously making large dividends among stockholders, we have notice of their purpose to be in default, which is at once a default and a fraud. It is not on the part of either company a "due administration of its affairs."

What faith these companies have kept with the Government and the people will appear in the report of the Wilson Credit Mobilier committee, before referred to, wherein it is shown—

> That the moneys borrowed by the corporation, under a power given them, only to meet the necessities of the construction and endowment of the road, have been distributed in dividends among the corporators; that the stock was issued, not to men who paid for it at par in money, but who paid for it at not more than thirty cents on the dollar in road-making; that of the Government directors some of them have neglected their duties and others have been interested in the transactions by which the provisions of the organic law have been evaded; that at least one of the commissioners appointed by the President has been directly bribed to betray his trust by the gift of $25,000; that the chief engineer of the road was largely interested in the contracts for its construction; and that there has been an attempt to prevent the exercise of the reserved power in Congress by inducing influential members of Congress to become interested in the profits of the transaction.

The railroad companies which this bill is to affect received about $11,000,000 annually of net earnings, after deducting all the costs of operating and management of their roads and the interest on their first-mortgage bonds. The reasonable and just provisions of this bill require them to apply or place a part not exceeding one-fourth of such net earnings where it may, with all its constantly accruing and compounding interest, be applied to the like just and reasonable demands of the Government that its money which built the roads shall be refunded.

More than this bill requires might in justice be demanded. And the fifth section ought not, in my judgment, to have been made a part of it; but we have still the power to alter, amend, and repeal, if the bill does not afford all the relief which justice demands.

Mr. Speaker, something has been said, and much more might be said, of the danger to be apprehended from the exercise by the National Government of ungranted power. I am not unmindful of that danger. I have witnessed its approach year by year and day by day with apprehension, quickened, I trust, with something of attachment for the good Government it may convert if not overthrow. But, sir, may I suggest that I have yet to see the first advance of this dangerous power in the direction of any undue restraint of overgrown grasping corporations and monopolies. It is said that no danger is to be apprehended from these, because there are agencies, Congress among them, by which they may be controlled. Let us then see to it that they do not control the agencies.

Mr. COX, of New York. I ask consent that members desiring to do so be allowed to print in the RECORD remarks on this funding bill.

There was no objection, and leave was granted accordingly. [See Appendix.]

Mr. SPRINGER. I now yield the remainder of my time to the gentleman from Ohio, [Mr. MCMAHON.]

Mr. MCMAHON. In the five minutes' time allowed me in the close

of this debate it is impossible, of course, to make an argument upon a legal proposition. But where there are so many lawyers as there are in this House a short statement of one's views is sufficient to enable them to form their judgment on such a question.

The main objection to this bill, coming from the gentleman from Massachusetts, [Mr. BUTLER,] and implied in the question of my distinguished colleague from Ohio, [Mr. GARFIELD,] is that it violates a contract. They rely of course upon the law as laid down in the famous Dartmouth College case and in the line of decisions following it. Now let me put an analogous case. Take the settled law of the United States to-day, in the matter of bankruptcy, upon the power of a State to pass a bankrupt law in the absence of a general national bankrupt law. A State may pass a bankrupt law which will operate upon all contracts entered into *after* its passage between citizens of the same State. But it cannot pass a bankrupt law which will operate upon any contract made prior to its passage. This is settled law to-day, as the gentleman from Massachusetts well knows, because when there is no bankrupt law of the United States in force, there is a State bankrupt law in his own State.

Now, why is a State bankrupt law which acts upon contracts entered into *prior* to its passage unconstitutional? Because it violates that provision of the Constitution of the United States which says that no State shall pass any law impairing the obligation of a contract. Therefore a bankrupt law affecting contracts entered into before its passage impairs the obligation of contracts. But a State can pass a bankrupt law, and it will operate upon contracts made between citizens of the same State after its passage, because the bankrupt law, in contemplation of law, enters into all contracts between the parties. And this is the law, although the parties contracting may be in fact ignorant of the existence of the law. The right to be discharged from the contract upon compliance with the bankrupt law is regarded as a part of its obligation. Hence such discharge does not violate its obligation.

The Pacific Railroad Companies stand precisely in this position under the laws organizing them. We passed certain laws which, under the unfortunate decision of the Supreme Court of the United States to which I have already alluded, were not only charters to the company but were as well contracts. But I would say to my friend from Massachusetts [Mr. BUTLER] that in the very so-called contract we reserved the right to alter, amend, or repeal the charter and the contract; and, having this absolute right, the exercise of it is a part of the contract and does not violate its obligation. But this is not simply a contract between individuals, but a charter, or, if you please, a contract entered into by the Government in its sovereign capacity, acting as a sovereign and using sovereign powers, in building under private instrumentalities great national highways to the Pacific coast. It did not intend to create a great monopoly beyond its control. It did not intend to donate the many millions of dollars it advanced. But it reserved the right to alter, amend, or repeal, not the franchise merely, but the whole law; not any particular section, but every section. Those who organized the companies under these laws took all the risks of amendment, alteration, or repeal. It was a part of their contract, compensated by its other liberal terms.

My friend says that "this bill will not hold water when it comes before the Supreme Court of the United States." I do not believe that he really expressed his opinion as a lawyer when he said so, because it was not five minutes afterward that he said, in answer to a question, that he was in favor of the main features of this bill.

I never took him to be a man who was in favor of anything that would not "hold water." But if he favors the main features of this bill he must favor the very parts of it which he pretends to say will not "hold water;" for they are not only the main features, but they are the only ones. All there is in this bill is contained in the very sections which he says will not hold water.

Now, Mr. Speaker, we do not want this bill to go to the Committee on the Judiciary. It would be safe there, but it is safer here. This democratic House is not following the bidding of the Senate of the United States, as the gentleman from Massachusetts says. We do not follow the bidding of any person. But there is one thing that a democratic House never yet did within my recollection. It never bowed down before the railroad corporations of this country. If the gentleman can say as much for the political party with which he now finds himself associated he will have to violate the truth of history. All the tremendous power of these great corporations was the voluntary gift of the republican party. History, as written by republican statesmen, says that every step taken by republican Congresses in their favor was marked by fraud and corruption. I welcome the day when some justice is to be done for the Government and the people.

It is true that we passed the silver bill as it came from the Senate. Why? Because we felt that the Senate was hostile to the general scope of the bill as passed by the House; that amendment would be absolute defeat of everything, and we took what we could get. This was sound policy. We do not propose to pass this bill at the dictation of the Senate. It meets our views exactly. The record of the House is far in advance of that of the Senate upon this question. As the Senate becomes more democratic it begins to do more justice to the people and leans less to corporations; and we welcome the passage of this bill by it as a good omen for the future. We take great pleasure under the circumstances in disregarding the warning of our friend from Massachusetts as to the fate of this bill in the courts. We prefer to take the judgment of the many able men who have given their opinion upon it at the other end of the Capitol; and the country, having almost implicit confidence in the ability, statesmanship, and integrity of the distinguished Senator from Ohio who led the fight in that body, will thank him and the democratic party for the sentiment which has finally compelled these enormous corporations to deal justly with their creditors, the people of the United States. There are millions in this bill, but for the first time it is millions for the people.

Mr. COX, of New York. I demand the previous question.

Mr. PRICE. I want to ask a question in reference to the condition of the bill before the House. Has it been read a second time?

The SPEAKER. It has not been; but it will be now read a second time.

Mr. PRICE. I only wanted to know whether the bill had been read the second time and now comes up on its third reading.

The SPEAKER. It has not yet been read a second time.

The Clerk read the bill a second time by its title.

Mr. FRYE. The bill having now been read a second time, I move that it be referred to the Judiciary Committee and "put under way."

The SPEAKER. The gentleman is not on the floor for that purpose, the gentleman from New York having demanded the previous question.

Mr. COX, of New York. I do not yield to the gentleman.

Mr. FRYE. I make the point of order that under the rules the previous question cannot be demanded to preclude a motion of this kind. The rule declares distinctly and positively that this motion shall be first in order.

The SPEAKER. The Chair thinks that this bill, like every other, is under the control of the majority of the House. The bill has now been read a second time by its title, and the Chair thinks that it is in order under Rule 42 to demand the previous question on the engrossment.

Mr. COX, of New York. I insist on the demand.

Mr. SAMPSON. I wish to inquire what is the main question. Is it not on the third reading of the bill?

The SPEAKER. The bill is now on its third reading.

Mr. SAMPSON. Then that is the main question; and on that the gentleman demands the previous question. Now does not the motion to commit come in and take precedence of the previous question? Do not the rules of the House expressly so provide?

The SPEAKER. The Chair thinks not. On the contrary, Rule 42, providing the order in which motions shall be submitted, recognizes distinctly the priority of the demand for the previous question. That is the rule which has uniformly governed, in the experience of the Chair.

Mr. SAMPSON. It has been constantly held in this House, it seems to me, that the motion to commit takes precedence of a motion to postpone or a motion for the previous question.

The SPEAKER. Rule 42 states differently. The majority of the House, if they desire to commit the bill, have only to vote down the previous question.

Mr. SAMPSON. If the Chair will wait a moment, I am certain I can find the rule to which I refer.

The SPEAKER. Rule 42 is the rule that controls this question. The rule to which the gentleman refers may be Rule 132.

Mr. CALKINS. I am not in favor of a motion to commit; but it occurs to me that Rule 42 is a general rule——

The SPEAKER. The Chair thinks so.

Mr. CALKINS. And that this other rule is a special rule operating in a case of this kind and taking it out of the operation of Rule 42.

The SPEAKER. This bill is before the House, and is to be governed by the rules of the House. Rule 42 is as explicit as language can make it.

Mr. FRYE. I ask the Chair very respectfully——

The SPEAKER. The Chair understands that.

Mr. FRYE. I ask the Speaker, very respectfully, to state what Rule 54 means:

> After one hour shall have been devoted to reports from committees and resolutions, it shall be in order, pending the consideration or discussion thereof, to entertain a motion that the House do now proceed to dispose of the business on the Speaker's table, and to the orders of the day—*January* 5, 1832; which being decided in the affirmative, the Speaker shall dispose of the business on his table in the following order, namely:
>
> First. Messages and other executive communications.
>
> Second. Messages from the Senate and amendments proposed by the Senate to bills of the House.
>
> Third. Bills and resolutions from the Senate on their first and second reading, that they be referred to committees and put under way; but if, on being read a second time, no motion being made to commit, they are to be ordered to their third reading, unless objection be made.

Now, under the ruling of the Speaker, to which I respectfully submit, (for I simply ask this question for information,) what does this rule amount to?

The SPEAKER. It does not amount to what the gentleman supposes, in the face of a rule specifically stating that the previous question shall have priority of a motion to commit, and if sustained cuts off that motion.

Mr. SAMPSON. I call the attention of the Speaker to page 272 of the Manual, where he will find the positive language of the rule. As I understand, this bill after it had been read a second time was open to debate. That being the case, this rule steps in and provides—

When a question is under debate, no motion shall be received, but to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit or amend.

It does seem to me that this is the positive language of the rule, which ought not to be violated. The gentleman from New York was recognized to make the motion for the previous question. Then any other gentleman had the right to rise and move to lay on the table or commit, and they must take precedence.

The SPEAKER. Rule 42 recognizes the right to lie upon the table but makes the motion to commit a subsequent motion to the demand for the previous question.

Mr. COX, of New York. I demand the previous question.

The previous question was seconded and the main question ordered; and under the operation thereof the bill was ordered to a third reading, and was accordingly read the third time.

Mr. COX, of New York, demanded the previous question on the passage of the bill.

The previous question was seconded and the main question ordered.

Mr. BELL demanded the yeas and nays on the passage of the bill.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 243, nays 2, not voting 46; as follows:

YEAS—243.

| | | | |
|---|---|---|---|
| Aldrich, | Caldwell, John W. | Davidson, | Glover, |
| Atkins, | Caldwell, W. P. | Davis, Horace | Goode, |
| Bacon, | Calkins, | Davis, Joseph J. | Gunter, |
| Bagley, | Camp, | Dean, | Hale, |
| Baker, John H. | Campbell, | Deering, | Hamilton, |
| Baker, William H. | Candler, | Denison, | Hanna, |
| Ballon, | Cannon, | Dibrell, | Hardenbergh, |
| Banning, | Carlisle, | Dickey, | Harmer, |
| Bayne, | Caswell, | Douglas, | Harris, Benj. W. |
| Beebe, | Chalmers, | Dunnell, | Harris, Henry R. |
| Bell, | Chittenden, | Durham, | Harris, John T. |
| Bicknell, | Claflin, | Eames, | Hart, |
| Bisbee, | Clark of Missouri, | Eden, | Hartridge, |
| Blackburn, | Clark, Rush | Elam, | Hartzell, |
| Blair, | Clarke of Kentucky, | Errett, | Haskell, |
| Bliss, | Clymer, | Evans, I. Newton | Hatcher, |
| Blount, | Cobb, | Evins, John H. | Hayes, |
| Boone, | Cole, | Ewing, | Hazelton, |
| Bouck, | Collins, | Felton, | Henderson, |
| Boyd, | Conger, | Finley, | Henry, |
| Bragg, | Cook, | Forney, | Herbert, |
| Brewer, | Covert, | Fort, | Hewitt, A. S. |
| Bridges, | Cox, Jacob D. | Franklin, | Hewitt, G. W. |
| Briggs, | Cox, Samuel S. | Freeman, | Hooker, |
| Bright, | Crapo, | Frye, | House, |
| Browne, | Cravens, | Fuller, | Hubbell, |
| Buckner, | Crittenden, | Gardner, | Humphrey, |
| Bundy, | Culberson, | Garth, | Hungerford, |
| Burchard, | Cummings, | Gause, | Hunter, |
| Cabell, | Cutler, | Gibson, | Hunton, |
| Cain, | Danford, | Giddings, | Ittner, |

| | | | |
|---|---|---|---|
| James, | Mills, | Rice, William W. | Thornburgh, |
| Jones, Frank | Mitchell, | Riddle, | Throckmorton, |
| Jones, James T. | Money, | Robbins, | Townsend, Amos |
| Jones, John S. | Monroe, | Roberts, | Townsend, M. I. |
| Joyce, | Morgan, | Robertson, | Turner, |
| Keightley, | Morrison, | Robinson, George D. | Turney, |
| Kenna, | Morse, | Robinson, Milton S. | Vance, |
| Ketcham, | Muldrow, | Ross, | Waddell, |
| Killinger, | Neal, | Ryan, | Walsh, |
| Kimmel, | Norcross, | Sampson, | Ward, |
| Knapp, | Oliver, | Sapp, | Warner, |
| Knott, | O'Neill, | Sayler, | Watson, |
| Landers, | Overton, | Schleicher, | Welch, |
| Lapham, | Page, | Singleton, | White, Harry |
| Lathrop, | Patterson, G. W. | Sinnickson, | White, Michael D. |
| Ligon, | Patterson, T. M. | Slemons, | Whitthorne, |
| Lindsey, | Peddie, | Smalls, | Wigginton, |
| Lockwood, | Phillips, | Smith, William E. | Williams, Andrew |
| Loring, | Pollard, | Southard, | Williams, C. G. |
| Luttrell, | Potter, | Sparks, | Williams, James |
| Mackey, | Pound, | Springer, | Williams, Jere N. |
| Maish, | Powers, | Starin, | Williams, Richard |
| Manning, | Price, | Steele, | Willis, Albert S. |
| Marsh, | Pugh, | Stenger, | Willits, |
| Martin, | Rainey, | Stephens, | Wilson, |
| McCook, | Rea, | Stewart, | Wood, |
| McKenzie, | Reagan, | Stone, John W. | Wren, |
| McKinley, | Reed, | Stone, Joseph C. | Wright, |
| McMahon, | Reilly, | Strait, | Yeates. |
| Metcalfe, | Rice, Americus V. | Thompson, | |

NAYS—2.

| | |
|---|---|
| Butler, | Lynde. |

NOT VOTING—46.

| | | | |
|---|---|---|---|
| Acklen, | Ellsworth, | McGowan, | Tipton, |
| Aiken, | Evans, James L. | Muller, | Townshend, R. W. |
| Banks, | Foster, | Phelps, | Tucker, |
| Benedict, | Garfield, | Pridemore, | Van Vorhes, |
| Bland, | Harrison, | Quinn, | Veeder, |
| Brentano, | Hendee, | Randolph, | Wait, |
| Brogden, | Henkle, | Scales, | Walker, |
| Burdick, | Hiscock, | Sexton, | Williams, A. S. |
| Clark, Alvah A. | Jorgensen, | Shallenberger, | Willis, Benj. A. |
| Dwight, | Keifer, | Shelley, | Young. |
| Eickhoff, | Kelley, | Smith, A. Herr | |
| Ellis, | Mayham, | Swann, | |

So the bill was passed.

During the vote,

Mr. HUNTON said: My colleague, Mr. TUCKER, who is absent by leave of the House, is paired with the gentleman from Ohio, Mr. GARFIELD. If he were here, he would vote in the affirmative.

Mr. WILLIAMS, of Michigan. I am paired with Mr. BANKS.

Mr. FORNEY. I wish to announce that Mr. WAIT is paired with Mr. PHELPS, and that Mr. SHELLEY is paired with Mr. EVANS, of Indiana.

Mr. BLISS. I desire to announce that my colleague, Mr. VEEDER, is detained from the House by severe illness.

Mr. O'NEILL. My colleague, Mr. SMITH, is absent by leave of the House, and if present, would vote in the affirmative. Judge KELLEY, who is temporarily absent, would also, if present, vote in the affirmative.

Mr. JONES, of Ohio. My colleague, Mr. VAN VORHES, is absent by leave of the House. If present, he would vote in the affirmative.

Mr. CALKINS. I am paired with Mr. CLARK, of New Jersey, on all political questions.

Mr. ALDRICH. Mr. TIPTON is paired with Mr. TOWNSHEND, of Illi-

nois, and Mr. BRENTANO with Mr. HARRISON. I believe they would all vote in the affirmative, if present.

Mr. HUNGERFORD. Mr. DWIGHT, of New York, is paired with his colleague, Mr. EICKHOFF.

Mr. LANDERS. My colleagues, Mr. WAIT and Mr. PHELPS, who are paired on all political questions, if present would both vote in the affirmative.

Mr. KEIGHTLEY. My colleagues, Mr. MCGOWAN and Mr. ELLSWORTH, who are absent, would, if present, vote in the affirmative.

The vote was then announced as above recorded.

Mr. COX, of New York, moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

[PUBLIC—No. 57.]

AN ACT to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act.

Whereas, on the first day of July, anno Domini eighteen hundred and sixty-two, Congress passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes;" and

Whereas afterward, on the second day of July, anno Domini eighteen hundred and sixty-four, Congress passed an act in amendment of said first-mentioned act; and

Whereas the Union Pacific Railroad Company, named in said acts, and under the authority thereof, undertook to construct a railway, after the passage thereof, over some part of the line mentioned in said acts; and

Whereas, under the authority of the said two acts, the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, undertook to construct a railway, after the passage of said acts, over some part of the line mentioned in said acts; and

Whereas the United States, upon demand of said Central Pacific Railroad Company, have heretofore issued, by way of loan and as provided in said acts, to and for the benefit of said company, in aid of the purposes named in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum, payable half yearly, to the amount of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars, which said bonds have been sold in the market or otherwise disposed of by said company; and

Whereas the said Central Pacific Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas, after the passage of said acts, the Western Pacific Railroad Company, a corporation then existing under the laws of California, did, under the authority of Congress, become the assignee of the rights, duties and obligations of the said Central Pacific Railroad Company, as provided in the act of Congress passed on the third of March, anno Domini eighteen hundred and sixty-five, and did, under the authority of the said act and of the acts aforesaid, construct a railroad from the city of San Jose to the city of Sacramento, in California, and did demand and receive from the United States the sum of one million nine hundred and seventy thousand five hundred and sixty dollars of the bonds of the United States, of the description before mentioned as issued to the Central Pacific Company, and in the same manner and under the provisions of said acts; and upon and in respect of the bonds so issued to both said

companies, the United States have paid interest to the sum of more than thirteen and a half million dollars, which has not been reimbursed; and

Whereas said Western Pacific Railroad Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States to it, and secured the same by mortgage, which are, if lawfully issued and disposed of, a prior and paramount lien to that of the United States, as stated, and secured thereby; and

Whereas said Western Pacific Railroad Company has since become merged in, and consolidated with, said Central Pacific Railroad Company, under the name of the Central Pacific Railroad Company, whereby the said Central Pacific Railroad Company has become liable to all the burdens, duties, and obligations before resting upon said Western Pacific Railroad Company; and divers other railroad companies have been merged in and consolidated with said Central Pacific Railroad Company; and

Whereas the United States, upon the demand of the said Union Pacific Railroad Company, have heretofore issued by way of loan to it and as provided in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum, payable half-yearly, the principal sums of which amount to twenty-seven million two hundred and thirty-six thousand five hundred and twelve dollars; on which the United States have paid over ten million dollars interest over and above all reimbursements; which said bonds have been sold in the market or otherwise disposed of by said corporation; and

Whereas said corporation has issued and disposed of an amount of its own bonds equal to the amounts so issued to it by the United States as aforesaid, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United States, of the said Central Pacific Company, amount in the aggregate to more than ninety six million dollars, and those of the said Union Pacific Railroad Company to more than eighty-eight million dollars; and

Whereas the United States, in view of the indebtedness and operations of said several railroad companies respectively, and of the disposition of their respective incomes, are not and cannot, without further legislation, be secure in their interests in and concerning said respective railroads and corporations, either as mentioned in said acts or otherwise; and

Whereas a due regard to the rights of said several companies respectively, as mentioned in said act of eighteen hundred and sixty-two, as well as just security to the United States in the premises, and in respect of all the matters set forth in said act, require that the said act of eighteen hundred and sixty-two be altered and amended as hereinafter enacted; and

Whereas, by reason of the premises also, as well as for other causes of public good and justice, the powers provided and reserved in said act of eighteen hundred and sixty-four for the amendment and alteration thereof ought also to be exercised as hereinafter enacted: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the net earnings mentioned in said act of eighteen hundred and sixty-two, of said railroad companies *respectively, shall be ascertained* by deducting from the gross amount *of their earnings respectively* the necessary expenses actually paid within

the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of eighteen hundred and sixty-four, as well as of said act of eighteen hundred and sixty-two. This section shall take effect on the thirtieth day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or of either of said railroad companies existing prior thereto.

SEC. 2. That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the Government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking-fund hereinafter provided, for the uses therein mentioned.

SEC. 3. That there shall be established in the Treasury of the United States a sinking-fund, which shall be invested by the Secretary of the Treasury in bonds of the United States; and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereinafter mentioned. And in making such investments the Secretary shall prefer the five per centum bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States. All the bonds belonging to said fund shall, as fast as they shall be obtained, be so stamped as to show that they belong to said fund, and that they are not good in the hands of other holders than the Secretary of the Treasury until they shall have been indorsed by him, and publicly disposed of pursuant to this act.

SEC. 4. That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the Government by said Central Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking-fund, the sum of one million two hundred thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad-company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding. That there shall be carried to the credit of the said fund, on the first day of February in each year the one-half of the compensation for services hereinbefore named, rendered for the Government by said Union Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking-fund, the sum of eight hundred and fifty thousand dollars, or so much thereof as shall be necessary to make the five per

centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding.

SEC. 5. That whenever it shall be made satisfactorily to appear to the Secretary of the Treasury, by either of said companies, that seventy-five per centum of its net earnings as hereinbefore defined, for any current year are or were insufficient to pay the interest for such year upon the obligations of such company, in respect of which obligations there may exist a lien paramount to that of the United States, and that such interest has been paid out of such net earnings, said Secretary is hereby authorized, and it is made his duty, to remit for such current year so much of the twenty-five per centum of net earnings required to be paid into the sinking-fund, as aforesaid, as may have been thus applied and used in the payment of interest as aforesaid.

SEC. 6. That no dividend shall be voted, made, or paid for or to any stockholder or stockholders in either of said companies respectively at any time when the said company shall be in default in respect of the payment either of the sums required as aforesaid to be paid into said sinking-fund, or in respect of the payment of the said five per centum of the net earnings, or in respect of interest upon any debt the lien of which, or of the debt on which it may accrue, is paramount to that of the United States; and any officer or person who shall vote, declare, make, or pay, and any stockholder of any of said companies who shall receive any such dividend contrary to the provisions of this act, shall be liable to the United States for the amount thereof, which, when recovered, shall be paid into said sinking-fund. And every such officer, person, or stockholder who shall knowingly vote, declare, make, or pay any such dividend, contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding ten thousand dollars, and by imprisonment not exceeding one year.

SEC. 7. That the said sinking-fund so established and accumulated shall, at the maturity of said bonds so respectively issued by the United States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not reimbursed, subject to the provisions of the next section.

SEC. 8. That said sinking-fund so established and accumated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking-fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking-fund may be entitled thereto in due order; but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner in this act provided, of any mortgage, lien, or other creditor of any of said companies respectively, nor to excuse any of *said companies respectively* from the duty of discharging, out of *other funds, its debts to any* creditor except the United States.

SEC. 9. That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into the Treasury, or into said sinking-fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon all the property, estate, rights, and franchises of every description granted or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal, and mixed, assets, and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon. But this section shall not be construed to prevent said companies respectively from using and disposing of any of their property or assets in the ordinary, proper and lawful course of their current business, in good faith and for valuable consideration.

SEC. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceeding against the said several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceeding already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to.

SEC. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

SEC. 12. That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal, as, in the opinion of Congress, justice or the public welfare may require. And nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in favor of the United States.

SEC. 13. That each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of eighteen hundred and sixty-two and of said act of eighteen hundred and sixty-four respectively, and of both said acts.

Approved, May 7, 1878.

# AUDITOR

OF

# RAILROAD ACCOUNTS.

## IN SENATE.

JUNE 4, 1878.

* * * * * * *

Mr. THURMAN. I ask the Senate to take up the bill which I have given notice of two or three times and to which I think there will be no opposition, as it ought to be passed at this session. It is a bill to create an auditor of railroad accounts. It is a bill that is considered absolutely necessary in order that we may have a correct settlement of accounts with the Pacific railroad companies to ascertain the 5 per cent. of net earnings, and also for several other purposes. I think there will be no objection to it. It is Senate bill No. 1200.

Mr. VOORHEES. I hope the Senator from Ohio will let me pass a little bill that cures a defect in our pension laws. It will not take two minutes; and there will be no objection to it at all.

Mr. THURMAN. Let my bill be taken up.

Mr. VOORHEES. I do not want to obstruct the Senator from Ohio at all, but this is a very necessary piece of legislation and I want to get it over to the House of Representatives.

Mr. THURMAN. Let this bill be taken up. It is a matter of public concern.

The PRESIDENT *pro tempore*. Is there objection to the present consideration of the bill named by the Senator from Ohio? The Chair hears none.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1200) to alter and amend the laws relative to the filing of reports of Pacific railroad companies, and for other purposes.

The Committee on the Judiciary reported the bill with an amendment, to strike out all after the enacting clause and insert the following:

That section 20 of the act entitled "An act to aid in the construction of a rail road and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, A. D. 1862, and the act entitled "An act relative to filing reports of railroad companies," approved June 25, A. D. 1868, be, and the same are hereby, repealed.

SEC. 2. That the office of auditor of railroad accounts is hereby established as a bureau of the Interior Department. The said auditor shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The annual salary of the said auditor shall be, and is hereby fixed at, the sum of $5,000. To assist the said auditor to perform the duties of said office, the Secretary of the Interior shall appoint one book-keeper at an annual salary of $2,400, one assistant book-keeper at an annual salary of $2,000, one clerk at an annual salary of $1,400, and one copyist at an annual salary of $900. Actual and necessary traveling and other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of $2,000 per annum; and it is hereby specially pro-

vided that each of said railroad companies shall furnish transportation over its own road, without expense to the United States, for the said auditor or any person acting under his direction. Incidental expenses for books, stationery, and other material necessary for the use of said bureau are hereby allowed, not to exceed the sum of $700 per annum. And the sum of $12,000 is hereby appropriated for the uses and purposes of this act for the fiscal year ending June 30, A. D. 1879.

SEC. 3. That the duties of said auditor under and subject to the direction of the Secretary of the Interior shall be, to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the Government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are enforced; to furnish such information to the several Departments of the Government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the Government; and to make an annual report to the Secretary of the Interior, on the 1st day of November, on the condition of each of said railroad companies, their road, accounts, and affairs, for the fiscal year ending June 30 immediately preceding.

SEC. 4. That each and every railroad company aforesaid which has received from the United States any bonds of the said United States, issued by way of loan to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for a similar purpose, shall make to the said auditor any and all such reports as he may require from time to time, and shall submit its books and records to the inspection of said auditor, or any person acting in his place and stead, at any time that the said auditor may request, in the office where said books and records are usually kept; and the said auditor or his authorized representative shall make such transcripts from the said books and records as he may desire.

SEC. 5. That if any railroad company aforesaid shall neglect or refuse to make such reports as may be called for, or refuse to submit its books and records to inspection, as provided in section 4 of this act, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than $1,000 nor more than $5,000, to be recovered by the Attorney-General of the United States in the name and for the use and benefit of the United States; and it shall be the duty of the Secretary of the Interior, in all such cases of neglect or refusal as aforesaid, to inform the Attorney-General of the facts, to the end that such forfeiture or forfeitures may be judicially enforced.

SEC. 6. This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies.

SEC. 7. This act shall take effect on and after the 1st day of July, A. D. 1878.

Amend the title so as to read: "A bill to create an auditor of railroad accounts, and for other purposes."

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to create an auditor of railroad accounts, and for other purposes."

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## HOUSE OF REPRESENTATIVES.

JUNE 19, 1878.

* * * * * * *

### AUDITOR OF RAILROAD ACCOUNTS.

Mr. CLARK, of Missouri. I move to suspend the rules and pass the bill (S. No. 1200) to create an auditor of railroad accounts, and for other purposes.

The Clerk read the bill, as follows:

That section 20 of the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, A. D. 1862, and the act entitled "An act relative to filing reports of railroad companies," approved June 25, A. D. 1868, be, and the same are hereby, repealed.

SEC. 2. That the office of auditor of railroad accounts is hereby established as a bureau of the Interior Department. The said auditor shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The annual salary of the said auditor shall be, and is hereby, fixed at the sum of $5,000. To assist the said auditor to perform the duties of said office, the Secretary of the Interior shall appoint one book-keeper at an annual salary of $2,400, one assistant book-keeper at an annual salary of $2,000, one clerk at an annual salary of $1,400, and one copyist at an annual salary of $900. Actual and necessary traveling and other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of $2,000 per annum; and it is hereby specially provided that each of said railroad companies shall furnish transportation over its own road, without expense to the United States, for the said auditor or any person acting under his direction. Incidental expenses for books, stationery, and other material necessary for the use of said bureau are hereby allowed, not to exceed the sum of $700 per annum. And the sum of $12,000 is hereby appropriated for the uses and purposes of this act for the fiscal year ending June 30, A. D. 1879.

SEC. 3. That the duties of said auditor, under and subject to the direction of the Secretary of the Interior, shall be to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the Government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are enforced; to furnish such information to the several Departments of the Government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the Government; and to make an annual report to the Secretary of the Interior, on the 1st day of November, on the condition of each of said railroad companies, their road, accounts, and affairs, for the fiscal year ending June 30 immediately preceding.

SEC. 4. That each and every railroad company aforesaid which has received from the United States any bonds of the said United States, issued by way of loan to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for a similar purpose, shall make to the said auditor any and all such reports as he may require from time to time, and shall submit its books and records to the inspection of said auditor, or any person acting in his place and stead, at any time that the said auditor may request, in the office where said books and records are usually kept; and the said auditor or his authorized representative shall make such transcripts from the said books and records as he may desire.

SEC. 5. That if any railroad company aforesaid shall neglect or refuse to make such receipts as may be called for, or refuse to submit its books and records to inspection, as provided in section 4 of this act, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than $1,000 nor more than $5,000, to be recovered by the Attorney-General of the United States in the name and for the use and benefit of the United States; and it shall be the duty of the Secretary of the Interior, in all such cases of neglect or refusal as aforesaid, to inform the Attorney-General of the facts, to the end that such forfeiture or forfeitures may be judicially enforced.

SEC. 6. This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies.

SEC. 7. This act shall take effect on and after the 1st day of July, A. D. 1878.

Mr. PAGE. Has this been reported by any House committee?

Mr. CLARK, of Missouri. It has not. I will state for the information of the House the bill was recommended by the Secretary of the Interior and unanimously passed the Judiciary Committee of the Senate.

Mr. BANNING. Is this not the same bill which passed the Senate.
Mr. CLARK, of Missouri. It is.
Mr. BUTLER. I object to debate.
The House divided; and there were—ayes 82, noes 5.
Mr. BUTLER. No quorum voting.
The SPEAKER *pro tempore*. The Chair will order tellers.
Mr. BANNING. It will save time to demand the yeas and nays.
The yeas and nays were ordered.
The question was taken; and it was decided in the affirmative—yeas 188, nays 13, not voting 89; as follows:

YEAS—188.

| | | | |
|---|---|---|---|
| Acklen, | Culberson, | Hewitt, Abram S. | Reed, |
| Aiken, | Cummings, | Hewitt, G. W. | Reilly, |
| Aldrich, | Cutler, | Hiscock, | Rice, Americus V. |
| Bacon, | Davidson, | Hooker, | Rice, William W. |
| Bagley, | Davis, Horace | House, | Riddle, |
| Baker, John H. | Davis, Joseph J. | Hunter, | Robbins, |
| Baker, William H. | Dean, | Hunton, | Robertson, |
| Banning, | Denison, | Ittner, | Robinson, G. D. |
| Bell, | Dibrell, | Jones, Frank | Ross, |
| Bicknell, | Dickey, | Jones, John S. | Sampson, |
| Blackburn, | Dunnell, | Jones, James T. | Sapp, |
| Blair, | Durham, | Keifer, | Sayler, |
| Bliss, | Eden, | Keightley, | Scales, |
| Blount, | Elam, | Kelley, | Schleicher, |
| Boone, | Ellsworth, | Lapham, | Sexton, |
| Boyd, | Evans, I. Newton | Lathrop, | Shallenberger, |
| Brentano, | Evans, James L. | Ligon, | Singleton, |
| Briggs, | Evins, John H. | Lindsey, | Sinnickson, |
| Bright, | Ewing, | Lockwood, | Smalls, |
| Brogden, | Felton, | Luttrell, | Smith, A. Herr |
| Browne, | Finley, | Mackey, | Smith, William E. |
| Bundy, | Forney, | Maish, | Sparks, |
| Cabell, | Foster, | Manning, | Springer, |
| Cain, | Franklin, | Marsh, | Steele, |
| Caldwell, John W. | Freeman, | McCook, | Stenger, |
| Caldwell, W. P. | Frye, | McKenzie, | Stewart, |
| Candler, | Fuller, | McKinley, | Strait, |
| Cannon, | Gardner, | McMahon, | Throckmorton, |
| Carlisle, | Garth, | Metcalfe, | Townsend, Amos |
| Caswell, | Gause, | Monroe, | Townshend, R. W. |
| Chalmers, | Gibson, | Morrison, | Tucker, |
| Claflin, | Giddings, | Muldrow, | Turney, |
| Clark, Alvah A. | Goode, | Neal, | Vance, |
| Clark, Rush | Hanna, | Norcross, | Veeder, |
| Clark of Missouri, | Hardenbergh, | Oliver, | Waddell, |
| Clarke of Kentucky, | Harmer, | O'Neill, | Wait, |
| Clymer, | Harris, Henry R. | Overton, | Ward, |
| Cobb, | Harris, John T. | Patterson, G. W. | Warner, |
| Cole, | Hart, | Patterson, T. M. | Watson, |
| Collins, | Hartridge, | Phelps, | White, Michael D. |
| Cook, | Hartzell, | Phillips, | Whitthorne, |
| Covert, | Haskell, | Pound, | Williams, C. G. |
| Cox, Jacob D. | Hayes, | Pridemore, | Williams, James |
| Cox, Samuel S. | Hazelton, | Pugh, | Willis, Albert S. |
| Crapo, | Henderson, | Randolph, | Willits, |
| Cravens, | Henkle, | Rea, | Wren, |
| Crittenden, | Herbert, | Reagan, | Yeates. |

NAYS—13.

| | | | |
|---|---|---|---|
| Bouck, | Campbell, | Jorgensen, | Welch. |
| Bragg, | Conger, | Mitchell, | |
| Brewer, | Danford, | Page. | |
| Burdick, | Humphrey, | Rainey, | |

NOT VOTING—89.

| | | | |
|---|---|---|---|
| Atkins, | Bayne, | Bisbee, | Buckner, |
| Ballou, | Beebe, | Bland, | Burchard, |
| Banks, | Benedict, | Bridges, | Butler, |

| | | | |
|---|---|---|---|
| Calkins, | Henry, | Morse, | Tipton, |
| Camp, | Hubbell, | Muller, | Townsend, M. I. |
| Chittenden, | Hungerford, | Peddie, | Turner, |
| Deering, | James, | Pollard, | Van Vorhes, |
| Douglas, | Joyce, | Potter, | Walker, |
| Dwight, | Kenna, | Powers, | Walsh, |
| Eames, | Ketcham, | Price, | White, Harry |
| Eickhoff, | Killinger, | Roberts, | Wigginton, |
| Ellis, | Kimmel, | Robinson, M. S. | Williams, Andrew |
| Errett, | Knapp, | Ryan, | Williams, A. S. |
| Fort, | Knott, | Shelley, | Williams, Jere N. |
| Garfield, | Landers, | Slemons, | Williams, Richard |
| Glover, | Loring, | Southard, | Willis, Benjamin A. |
| Gunter, | Lynde, | Starin, | Wilson, |
| Hale, | Martin, | Stephens, | Wood, |
| Hamilton, | Mayham, | Stone, Joseph C. | Wright, |
| Harris, Benj. W. | McGowan, | Stone, John W. | Young. |
| Harrison, | Mills, | Swann, | |
| Hatcher, | Money, | Thompson, | |
| Hendee, | Morgan, | Thornburgh, | |

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

During the vote,

Mr. SHELLEY said: I am paired with Mr. THOMPSON, of Pennsylvania.

Mr. PUGH. I am paired with Mr. MARTIN on all political questions; but not regarding this as one, I vote in the affirmative.

Mr. COVERT. I announce that Mr. MCKINLEY, with whom I am paired on all party questions, has been called from the House on important business; if he were present, he would vote in the affirmative.

Mr. WARD. My colleague, Mr. ERRETT, is paired with Mr. RYAN.

Mr. FREEMAN. I am paired on all political questions with Mr. SLEMONS; but not regarding this one, I vote in the affirmative.

Mr. JOYCE. I am paired with Mr. BEEBE.

Mr. STARIN. My colleague, Mr. JAMES, is absent on account of sickness.

On motion of Mr. FINLEY, by unanimous consent, the reading of the names was dispensed with.

The vote was then announced as above recorded.

[PUBLIC—No. 121.]

AN ACT to create an Auditor of Railroad Accounts and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section twenty of the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military and other purposes", approved July first anno Domini eighteen hundred and sixty-two, and the act entitled "An act relative to filing reports of railroad companies" approved June twenty-fifth, anno Domini eighteen hundred and sixty-eight, be, and the same are hereby, repealed.

SEC 2. That the office of Auditor of Railroad Accounts is hereby established as a bureau of the Interior Department. The said Auditor shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The annual salary of the said Auditor shall be, and is hereby, fixed at the sum of five thousand dollars. To assist the said Auditor to perform the duties of said office, the Secretary of the Interior shall appoint one bookkeeper at an annual salary of two thousand four hundred dollars, one assistant bookkeeper at an annual salary of two thousand dollars, one clerk at an annual salary of one thousand four hundred dollars, and one copyist at an annual salary of nine hundred dollars. Actual and necessary traveling and other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of two thousand dollars per annum; and it is hereby specially provided that each of said railroad companies shall furnish transportation over its own road, without expense to the United States, for the said Auditor or any person acting under his direction. Incidental expenses for books, stationery and other material necessary for the use of said bureau are hereby allowed not to exceed the sum of seven hundred dollars per annum. And the sum of twelve thousand dollars is hereby appropriated for the uses and purposes of this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and seventy-nine.

SEC. 3 That the duties of the said Auditor under and subject to the direction of the Secretary of the Interior shall be, to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are enforced; to furnish such information to the several departments of the government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the government; and to make an annual report to the Secretary of the Interior, on the

st day of November, on the condition of each of said railroad compa-
s, their road, accounts, and affairs, for the fiscal year ending June
rtieth immediately preceding.

SEC 4. That each and every railroad company aforesaid which has
eived from the United States any bonds of the said United States,
ued by way of loan to aid in constructing or furnishing its road, or
ich has received from the United States any lands granted to it for
similar purpose, shall make to the said Auditor any and all such
orts as he may require from time to time and shall submit its books
d records to the inspection of said Auditor or any person acting in
s place and stead, at any time that the said Auditor may request, in
e office where said books and records are usually kept; and the said
ditor, or his authorized representative, shall make such transcripts
m the said books and records as he may desire.

SEC 5. That if any railroad company aforesaid shall neglect or refuse
make such reports as may be called for, or refuse to submit its books
d records to inspection, as provided in section four of this act, such
glect or refusal shall operate as a forfeiture, in each case of such
glect or refusal, of a sum not less than one thousand nor more than five
ousand dollars, to be recovered by the Attorney-General of the United
ates in the name and for the use and benefit of the United States;
d it shall be the duty of the Secretary of the Interior, in all such cases
neglect or refusal as aforesaid, to inform the Attorney-General of
e facts, to the end that such forfeiture or forfeitures may be judicially
forced.

SEC. 6. This act shall apply to any and all persons or corporations into
ose hands either of said railroads may lawfully come, as well as to
e original companies.

SEC 7. This act shall take effect on and after the first day of July,
no Domini eighteen hundred and seventy-eight.

Approved, June 19, 1878.

## IN SENATE.

JUNE 5, 1878.

KANSAS PACIFIC RAILROAD SINKING FUND.

* * * * * * *

Mr. THURMAN. I am instructed by the Committee on the Judiciary to report a bill in relation to the Kansas Pacific Railway Company, &c. I wish to state that this is a bill to create a sinking fund of the Kansas Pacific Railroad Company, and is identical in its provisions with the provisions of the act which has passed Congress in relation to the Central and Union Pacific Railroad Companies, with the necessary alterations in respect to amount. The bill ought to be passed at this session. It is not opposed, but on the contrary is favored by the company itself. Under the circumstances, as soon as the bill shall have been printed, I will ask the Senate to take it up for consideration.

The bill (S. No. 1369) in relation to the Kansas Pacific Railway Company and to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act, was read twice by its title.

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JUNE 13, 1878.

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KANSAS PACIFIC RAILROAD.

The next bill on the Calendar was the bill (S. No. 1368) in relation to the Kansas Pacific Railroad, and to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. TELLER. I object to that bill.

Mr. THURMAN. Do I understand my friend to object to the bill?

Mr. TELLER. I do.

Mr. THURMAN. Which bill does he take it to be?

Mr. TELLER. I have read the bill; I know what it is.

Mr. THURMAN. If the Senator will withdraw his objection one moment, this bill is identical with the bill that has passed with regard to the Union Pacific and Central Pacific, with the necessary alterations in name and amount, and its passage is urged by the representative of the road; and the same public considerations that required the other bill to pass and that carried it by so large a majority of both branches exist in reference to this. I hope the Senator will not insist on his objection, but will let us have the consideration of this bill.

Mr. TELLER. I did not vote for the other bill; I do not expect

to vote for this bill, not even if the railroad company desire it. I shall insist upon my objection.

Mr. THURMAN. Then I move that the Senate proceed to the consideration of this bill, laying aside the Calendar temporarily for that purpose. That motion is in order after the morning hour is out. During the morning hour the rule that we agreed to by unanimous consent to consider unobjected cases under the Anthony rule obtains; but after the expiration of the morning hour a majority of the Senate can take up any bill it pleases.

Mr. KERNAN. We have done so to-day.

Mr. THURMAN. I move that the Calendar be laid aside temporarily and that we proceed to the consideration of this bill.

The PRESIDING OFFICER. The question is on the motion of the Senator from Ohio.

The motion was agreed to.

Mr. THURMAN. I move now that the Senate adjourn.

Mr. HOAR. I desire to move an amendment to this bill, and if the Senator will withdraw his motion and allow the amendment to be introduced and printed, so that it may be before us to-morrow, I shall be obliged to him.

Mr. THURMAN. Certainly.

The PRESIDING OFFICER. The amendment will be received and ordered to be printed.

Mr. THURMAN. Let it be read.

The Secretary read as follows:

The salary of the Government directors appointed for the Union Pacific Railroad by virtue of the provisions of the act to which this is an amendment, shall hereafter be fixed by the President of the United States and paid by the said company. No Government director shall hereafter receive any compensation from said company, except such salary, for any service rendered to it, or make any contract with said company whereby he shall receive any emolument or advantage whatever.

Mr. THURMAN. I think that is well enough.

Mr. HOAR. I desire to explain in one minute if the Senator who has this bill in charge will allow me. The Government directors of the Union Pacific Railroad are placed there for the benefit of the public, and the act requires that one of them shall be a member of every general and every special committee. Their salaries, however, are fixed and paid by the road and are very large, and they are employed as counsel and otherwise, some of them in the service of the road. The result is that they are as thoroughly dependent on the railroad as men can possibly be. In the course of examination into the affairs of that road by a committee of which I was a member in the other House, the fact appeared that one of the Government directors appeared before the committee and testified that a very important bill favorable to the interests of that road had just passed Congress. Some of the persons in its employ were present in Washington when the bill was passed. When they returned to Boston there was a meeting of the directors and an authority by the directors to a subcommittee to expend the sum of $167,000 for what they called "special legal expenses," and the treasurer was called upon to pay out that sum on the vouchers of this subcommittee. The Government director, who was a member of the subcommittee, as the law required, testified himself that he went to the room where the committee met, and when that subject came up got up and left the room because he did not want to know what those expenses were for. In the course of cross-examination I repeated to him what was the subject of his examination and called his attention to the inference

which might be drawn from that answer of his if he afforded no further explanation, and he said he had no further explanation to make.

Mr. THURMAN. I have not the least objection in the world to the amendment; it is a very proper one indeed; but I did not think it had anything particularly to do with this bill.

Mr. DAVIS, of Illinois. The Senator will recollect that we considered that subject; our attention was brought to the point; but we thought it was not germane to this bill.

Mr. THURMAN. So we did.

Mr. HOAR. The Senator will allow me to say that I called the attention of the chairman of the Committee on the Judiciary, now absent, [Mr. EDMUNDS,] and of one or two other members of that committee after the sinking-fund bill passed, and they expressed their regret that the point had not been earlier raised, that this amendment might have been attached to that bill.

Mr. THURMAN. I will agree to it as an additional section to the bill.

Mr. HOAR. I think it ought to go on to this bill.

Mr. ROLLINS. I desire to correct a statement of the Senator from Massachusetts about the pay of the Government directors. They are not paid a salary.

Mr. HOAR. They are paid a compensation.

Mr. ROLLINS. They are paid $10 a day for the time necessarily employed and their actual traveling expenses. That is fixed by law.

The PRESIDING OFFICER. Does the Senator from Ohio insist upon his motion to adjourn?

Mr. THURMAN. Yes, sir.

The PRESIDING OFFICER. It is moved that the Senate do now adjourn.

The motion was agreed to; and (at six o'clock and two minutes p. m.) the Senate adjourned.

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JUNE 14, 1878.

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KANSAS PACIFIC RAILROAD.

Mr. THURMAN. I wish to make an inquiry of the Chair, as I am needed elsewhere on a conference committee and want to regulate my time. Yesterday, after the expiration of the morning hour, and while we were considering the Calendar, on my motion the Kansas Pacific Railroad funding bill was taken up, the Calendar being laid aside in order to proceed to the consideration of that bill, and we adjourned, leaving that as the unfinished business. The bill stands first on the Calendar, where its consideration was left off yesterday. If we proceed to the Calendar in the morning hour, what I wish to know is whether that bill comes up as the first bill on the Calendar or whether it stands as the unfinished business for half past twelve o'clock.

The PRESIDENT *pro tempore*. It being the unfinished business, it will come up at half past twelve o'clock.

Mr. SARGENT. An objection now interposed would certainly take it over.

The PRESIDENT *pro tempore*. It will continue the unfinished business.

Mr. THURMAN. The understanding then is that it will be the unfinished business at half past twelve o'clock.

The PRESIDENT *pro tempore*. At half past twelve.

Mr. HOAR. It strikes me that it was taken from the Calendar on a motion.

The PRESIDENT *pro tempore*. It was moved from the Calendar and was pending when the Senate adjourned, so that it will be the unfinished business at the conclusion of the morning hour.

* * * * * * *

KANSAS PACIFIC RAILROAD.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 1368) in relation to the Kansas Pacific Railroad, and to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Mr. THURMAN. Let us have a vote on the amendment of the Senator from Massachusetts, [Mr. HOAR.]

Mr. HOAR. On consultation with some gentlemen specially acquainted with this subject I have redrafted my amendment. I desire to withdraw the amendment offered yesterday and offer it again in this form:

SEC. —. The compensation of the Government directors appointed for the Union Pacific Railroad by virtue of the provisions of the act to which this is an amendment shall be fixed at $10 a day while absent from home engaged in their duties as directors, in addition to their actual traveling expenses, the account of their services to be rendered to and approved by the Secretary of the Interior before such payment. No Government director shall hereafter receive any compensation from said company, except as aforesaid, for any service rendered to it, or make or be interested in any contract with the said company whereby he shall receive any emolument or advantage whatever.

Mr. THURMAN. I have no objection to that.

Mr. HOAR. This varies from the other in using the term "compensation" and fixing it by law.

Mr. CONKLING. What is it?

Mr. HOAR. The compensation by the present law is to be fixed by the directors. It is fixed by the directors at $10 a day, and the reasonable traveling expenses of the directors, but the amount of service is left to be agreed on by the director with the company. It is entirely in the control of the company, and the director also is at liberty to be employed as counsel or to be in the service of the company in other ways. This fixes by law the existing compensation, requires an account to be rendered to the Secretary of the Interior and approved by him of the service, and prohibits any other compensation.

Mr. THURMAN. All right.

Mr. CHRISTIANCY. I wish to propose an amendment to the amendment. Where this amendment provides that none of these directors shall receive any compensation from the company, I wish to add after the word "company" the words "or any officer thereof."

Mr. HOAR. No objection.

Mr. THURMAN. He ought not to receive compensation from an officer acting in his official capacity; that would be compensation from the company.

Mr. CHRISTIANCY. If the Senator from Ohio will allow me, it is just by trickery of that kind that laws are often evaded, and I wish to avoid such an evasion.

Mr. THURMAN. I do not want to take any time about it.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. THURMAN. I have nothing to say on this bill except what I have already said; it is exactly the bill which has already passed both Houses in regard to the Union Pacific and the Central Pacific, with the necessary alterations in the names and amounts.

Mr. TELLER. I do not propose to detain the Senate at any length by stating my objections to this bill, for I know they will not at all affect the final result. I suppose, the Judiciary Committee having reported this bill, the Senate having committed itself heretofore to this kind of legislation, it is almost certain that this bill will be passed. But I desire to call the attention of the Senate for a very few moments only to the different positions of these companies.

When the other bill, known as the funding bill, or Senate bill No. 15, was before the Senate, it was contended, in the first place, that Congress had the power, and, secondly, having the power to pass the law, it was the duty of Congress to pass it, because the companies were abundantly able to respond to the requirements of the act. In the present case I do not believe the committee has extended its inquiry to that branch of the case at all. It is said here by the honorable Senator who has the bill in charge that the company has petitioned for this legislation. I do not know in what method or manner the company has brought this case before the Judiciary Committee. I have not myself seen any application made to Congress for legislation of this kind, and I should like to call the attention of the Senate and of the committee to the fact that this company that it is now provided shall pay $300,000 per annum or forfeit all the rights and privileges granted to it by Congress, has been for some time in the hands of a receiver and for the last five years it has paid no part, as I understand, of the interest on its first-mortgage bonds. If the company has asked Congress to impose a burden upon it of $300,000 a year when it is unable to pay the interest on its debt, it is reasonable to suppose it is done for some purpose that perhaps does not now appear. I think if the condition of the company was understood Senators might infer some reason why this company now, or perhaps some portion of the persons connected with the company, are willing and anxious to have this burden imposed upon the company.

The Government of the United States appropriated in the way of a loan to this company for the first four hundred miles, or nearly that—three hundred and ninety-four miles—of the road, $16,000 a mile. On that portion of the road the Government has a second-mortgage lien. Two hundred and forty-five miles of the road were built without Government aid at all, and upon that part of the line I contend and the bondholders contend the Government has no lien whatever except the right to demand of this company its 5 per cent. and one-half the transportation account, as provided in the charter.

The company having failed to pay its interest a portion of the bondholders took steps to put it in the hands of a receiver and did so in the United States courts. A company unable to pay its interest, unable to pay the one-half of its interest, we are now assured is anxious to have Congress impose upon it a burden of $300,000 a year. The result, then, of the legislation is to make what was a second mortgage a first mortgage to all intents and purposes, for this com-

pany for five years has not been able to raise as much as the $300,000 proposed to be appropriated to the Government sinking fund to pay on its interest on its first-mortgage bonds.

Now, Mr. President, I have not any interest in this road; I have not any friends that have any interest in the road; and I can say truthfully here to-day that I do not know positively of a man of my acquaintance who owns a dollar in this road at the present time. I understand some gentlemen whom I have heard of do own part of it, but I know nothing about it; and I suppose their interest is promoted by this proceeding if they are praying for this legislation.

But I want to call the attention of the Senate to this class of legislation. Before it was asserted that the power of Congress should be exerted because the companies could pay without violating the provisions of the act that gave the first mortgage and prior lien on the road to other creditors than the Government. Now it is proposed to do it without any inquiry into that subject at all and to supersede the rights of the bondholders on two hundred and forty-five miles of this road, from which one-quarter of the revenue of the company is derived. All the revenue of the entire road is to be taken, to their exclusion if necessary, to pay the sinking fund on a debt that they have no connection with at all. Their two hundred thousand dollars and upward of income, as shown by the statement of the company, is derived from the unmortgaged portion of the road, so far as the Government is concerned, and that is to be appropriated to pay this debt of the Government to the exclusion of the bondholders holding bonds amounting in all in value to $6,350,000. These bonds by the misfortunes of this company and by its bad management have been depreciated so that, I understand, to-day they are worth not more than thirty cents on the Western or Denver Division, as it is called. I can imagine that under this kind of legislation they will be put on the market very soon at ten cents on the dollar and perhaps at five cents ultimately; and by this legislation $6,350,000, held mostly abroad in foreign countries and by the men who built two hundred and forty-five miles of the road, will be rendered practically worthless. I say that the Committee on the Judiciary cannot have investigated this condition of the affairs of this company or they would not have reported this bill.

The statement published by this company, which is a favorable statement to them, the most favorable that can be published, shows the utter inability of the company to pay its interest on its bonds and pay this sinking fund. In addition to the two hundred and forty-five miles of road that I have mentioned there are one hundred and forty-three miles of road in connection with the main road that are contributing to the earnings of the company. That is not provided for at all under any circumstances; so that there are three hundred and eighty-eight miles of road built by men who are under no obligation to the Government, some of it owned by companies entirely separate from the Kansas Pacific, except as they have been linked in interest, and yet under this system all the earnings are to be taken to pay the interest on the first-mortgage bonds, which are a paramount lien to the Government, and it will absorb the balance in the sinking fund.

Mr. THURMAN. Is the Senator speaking of the road from Denver to Cheyenne?

Mr. TELLER. I am speaking of what is called the Leavenworth branch; I am speaking of what is called the Los Animas branch, and I am speaking of what is called the Junction City and Fort Kearney road. I understand the Denver Pacific has no connection with this measure.

Mr. THURMAN. This bill does not touch the Denver Pacific.

Mr. TELLER. Not at all. I have not any idea that anything I can say on this bill will affect this legislation. I think it is dangerous for the persons who own property in this country to submit it to congressional dictation, as I have said on a former occasion. This is the plainest illustration that great injustice may be done to property-holders by bills of this kind that could be brought to the attention of the Senate. The honorable Senator said the company was asking this. Have the bondholders asked it? Have the men who built the road asked it? Have the men who have never pledged their receipts to the Government asked it? Has anybody asked it except a few stock-jobbers who may have got the control of one portion of this road at this particular time? I say they have not asked this legislation and that this legislation is not in the interest of this road, but is in the interest of outside speculation.

Mr. President, an examination of the tables as published in Poore's Manual will show the absolute inability of this company to comply with this law. A knowledge of the true condition of this company will convince every man that not only are they unable to comply with this law, but they are unable to comply with the conditions of their mortgage bonds and pay the interest on them. I believe, as I before said, that for five years they have paid little or nothing on their interest at all.

Now, Mr. President, having entered my protest against this bill, more because I desire to enter my protest against this class of legislation than against this particular bill, I have nothing further to say upon the subject.

Mr. THURMAN. I will not take up the time of the Senate in answering the objections made by the Senator from Colorado. His first proposition is that the company is unable to comply with the bill. That is an entire mistake, because we cannot take from them under the law as it now exists, and under this bill superadded, more than 25 per cent. of the net earnings, leaving 75 per cent. of the net earnings; and computing net earnings, too, after allowing it to pay the interest on its first-mortgage bonds; so that there is no trouble in the world about that.

Mr. TELLER. I should like to inquire of the Senator if that is quite true. I understand that this bill allows a deduction on those bonds that are a paramount lien to the Government bonds, which are on the first four hundred miles.

Mr. THURMAN. Undoubtedly we shall have to do that, and this allows them to do more than the Court of Claims has just decided they are entitled to, for it has just decided that these railroad companies have no right to deduct the interest on their first-mortgage bonds before the Government gets its 5 per cent. So there is no difficulty in that respect.

Then the Senator says that he does not think the company wants the bill, but some outside stock-jobbers want it. All I can say is that every representative of the company that has appeared, from away back in November last up to this time, has said they do want the bill, because they want to know whether the Government is going to pursue precisely the same policy with respect to this road that it has pursued in respect to the Union and the Central Pacific, and they want to know that now, and the sooner it is known the better it will be, and especially will it be the better if the road shall come to a judicial sale, which it is hoped, I understand, will be avoided.

Then the Senator says that the bill makes the Government mort-

gage, which is now subordinate to the first mortgage, in effect a first mortgage. That is entirely a mistake. The bill in express terms reserves and preserves the right of every mortgage or lien holder according to his priority.

I do not think it necessary for me to say more about it. It is just the bill that was passed in regard to the Union Pacific and Central Pacific by a vote of forty to nineteen in the Senate, if I recollect aright, and that passed the other House with only two dissenting voices. I hope the bill will pass.

Mr. PADDOCK. I should like to inquire of the Senator from Colorado what class of bonds it was to which he referred that are not a paramount lien.

Mr. TELLER. The Government has no lien upon the road west of the four-hundred-mile post. Therefore it cannot be said when you refer to mortgages that are a paramount lien to the Government that you include those on that part of the road. This bill takes 25 per cent. of the net earnings on the west part, which the Government has no claim on, and of the net earnings of the branches.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. THURMAN. There is a preamble.

The PRESIDENT *pro tempore*. The preamble will be regarded as agreed to.

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JUNE 14, 1878.

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PRORATE—PACIFIC RAILROAD COMMISSIONERS.

The bill (S. No. 1337) creating a board to be known as "the Pacific Railroad commissioners" was considered as in Committee of the Whole.

The bill was reported from the Committee on the Judiciary with an amendment, to strike out all after the enacting clause and insert:

That Charles Francis Adams, jr., of Massachusetts, Albert Fink, of Kentucky, and an officer of engineers to be detailed by the President, and their successors, are hereby constituted a board, to be known as "The Pacific Railroad commissioners," to serve until January 1, 1879. The President shall fill any vacancy, original or subsequent, occurring in their number. They shall appoint two clerks and may remove them at their pleasure. The said commissioners and clerk shall be sworn to the true and faithful discharge of their duties before entering upon the same. No one of them shall be in the employ or own any stock or bonds of any one of the corporations hereinafter referred to. Two commissioners shall constitute a quorum, and the board may act notwithstanding a vacancy. At the expiration of the said term of its existence, the said board shall deposit in the Department of the Interior all their books, records, and papers, duly authenticated and certified.

SEC. 2. It shall be the duty of the said commissioners to ascertain the following facts in respect of each of the corporations named in the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and the several acts amendatory thereof and supplementary thereto, namely:

First. Cost of construction of each division of road.

Second. Cost of right of way and of equipment.

Third. Other items embraced in cost of road not embraced in preceding items.

Fourth. Length of main and of side tracks.

Fifth. Profile or statement showing rate, amount, direction, and locality of grades.

Sixth. Radius and locality of each curve, with length of curve on each division.

Seventh. Total length of straight road and total degrees of curvature.

Eighth. Number of engines, passenger cars, freight cars, express and baggage cars, and other cars.

Ninth. Highest rate of speed allowed for express, accommodation, freight, and other trains on each division; also average rate.

Tenth. Rates of fare charged for through passengers for the respective classes per mile, and for local passengers of several classes per mile between the several stations.

Eleventh. Rates charged for freight of all different classes, both local and through, per mile, and between all the several stations.

Twelfth. Number of miles run by passenger and freight trains, both local and through.

Thirteenth. Total number of passengers carried, both local and through, of all classes, and total number of loads and of tons of freight, both local and through, of all classes.

Fourteenth. The monthly gross earnings for the transportation of passengers, and also of freight.

Fifteenth. The monthly expenditures for the running of passenger trains, and also of freight trains.

Sixteenth. Expenditures in maintaining and improving road, equipment, and other related matters, including labor, motive power, station-houses, buildings, and fixtures.

Seventeenth. Monthly gross earnings from the transportation of through and of local passengers, of through and local freight, of mail and express, and from other sources.

Eighteenth. What running arrangements it has with other railroad companies, setting forth the contracts for the same.

Nineteenth. What terminal facilities are provided, and what charges are made therefor, by one of the companies named in the acts aforesaid, to any or either of the others of said companies.

Twentieth. Any other facts or testimony which may aid in establishing equitable rates for the transportation of persons and property over said roads, or any portion thereof, or that, in the opinion of said commissioners, or a majority of them, are material for the consideration of Congress.

The said railroad corporations, or their officers, shall at all times, on demand, furnish said commissioners any information in their power to furnish required by them touching either of the matters aforesaid, and especially concerning the condition, management, and operation of their roads, and shall allow them access to their books, and shall furnish them copies of all leases, contracts, and agreements for transportation to which they are parties, and also the rates for transporting freight and passengers on their roads and on roads with which their roads have connection in business; and all of the information collected by said commissioners shall be set out or annexed to their report hereinafter provided for.

SEC. 3. The said commissioners shall, on the 1st day of January, in the year 1879, make a report to the Secretary of the Interior of all their proceedings and doings, and the facts ascertained by them in their investigation aforesaid, together with such suggestions and recommendations as to the commissioners may seem appropriate, touching the matters aforesaid. And they shall state what, in their opinion, would be an equitable and fair tariff of rates or division of earnings between the companies for or by the transportation of freight and passengers over the whole length, or any parts thereof, of any two or more of said roads. And said Secretary shall cause such report, with all the exhibits and testimony reported therewith, to be forthwith printed, and shall transmit 1,000 copies thereof to Congress, 300 thereof for the use of the Senate, and 700 for the use of the House of Representatives. The board may issue subpœnas for the attendance of witnesses and the production of any books and papers, and cause the same to be served by any disinterested person, and either commissioner may administer oaths.

SEC. 4. The said commissioners and their clerks shall be allowed free transportation over all of said roads. The said commissioners, except the engineer, shall be paid a salary at the rate of $800 per month each, and each of their clerks shall be paid such compensation as they shall allow, not exceeding $300 per month; and they shall be allowed the expenses of their office, and stationery, books, and maps. Said salaries and compensation shall be payable monthly, out of any money in the Treasury not otherwise appropriated, on the order of the chairman of the board. And for the payment of said expenses and the cost of summoning witnesses and witness fees the sum of $2,000, payable upon a like order, is hereby appropriated.

Mr. THURMAN. In section 3, line 2, of the amendment, I move to strike out "January" and insert "December," and to strike out the

word "nine," at the end of the line, and insert "eight;" so as to read:

The said commissioners shall, on the 1st day of December, in the year 1878, make a report to the Secretary of the Interior, &c.

The amendment to the amendment was agreed to.

Mr. SAUNDERS. In section 1, line 10, of the amendment, I move to strike out "two" and insert "one," and to change "clerks" to "clerk;" so as to read: "one clerk." I see no necessity for two clerks.

Mr. THURMAN. I will only say that the committee very carefully considered that language. I am sure if my friend will consider it he will be satisfied that the commission will need two clerks. One clerk cannot do the mere manual writing which the commission will have to perform.

Mr. SAUNDERS. I see that the original bill provided for but one clerk, and I have never seen a case where the business of a commission of that kind composed of three men would require more than one clerk. I am satisfied that one clerk will answer the purpose.

Mr. THURMAN. I know the original bill provided for but one clerk, and that is one thing we thought needed amendment, after carefully considering it.

Mr. SAUNDERS. I cannot see why one clerk cannot do the work.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Nebraska to the amendment of the committee.

The question being put, a division was called for; and the ayes were 14 and the noes 23; no quorum voting.

Mr. THURMAN. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. PADDOCK. If it be in order to make a remark, I should like to say that it looks a little to me as though there was an effort to build up a commission of great magnitude here, somewhat upon the aristocratic order. While I have no doubt it will be a very able commission, nevertheless there are but three of them in number, all told. They are to sit for a long period of time, undoubtedly; and it seems to me that one clerk will be quite sufficient to take down all the notes and keep all the records of such a commission. If it were a commission of a dozen or more members, it would be quite a different matter; but in the interest of economy I suggest that the amendment of my colleague is a very just, proper, and necessary one.

Mr. ROLLINS. I desire to ask some friend of this bill to state the reason, if any exists, why all the information called for in the bill cannot be secured without this machinery? It seems to me to be entirely unnecessary. I think every part of it can be secured without expense to the Government and without this machinery.

Mr. PADDOCK. So far as I am concerned, I should be very glad to see this commission created. It would likely do a great deal of work; but at the same time I want to have it carried on economically.

Mr. CONKLING. This is a railroad bill as I understand that does not involve much law, but as it comes from the Judiciary Committee I venture to inquire of some member of the committee who is prepared to answer, how it happens that by law we are to appoint, I will not say officers, but commissioners, they are called here, and then delegate to them authority to appoint still other persons, I will not say officers again, but clerks. The Constitution makes rather stringent provision in this regard. It declares that all officers of the United States shall be appointed in a way indicated, by the President

and Senate, or else by the heads of Departments or courts of law, if that is the direction of the statute. Now we propose by law and by name to appoint certain persons commissioners and then to delegate to them official authority, and among the authority delegated is the power to appoint clerks; and this amendment arises, as I understand, on the question of whether there is to be one clerk or two. I do not know but that there may be authority for this and perhaps an argument which shows that we steer clear of the constitutional provision; but it strikes me as an oddity. If there is some simple answer to this, I wish some Senator who is prepared to do it will give it.

Mr. THURMAN. Why, Mr. President, there is no officer created by this bill——

Mr. CONKLING. What is it?

Mr. THURMAN. He is simply a commissioner to obtain information—that is all he is—and he does not require confirmation any more than the commissioners who sat in the electoral commission and appointed clerks. Many of them were officers of the United States who had been nominated by the President and confirmed by the Senate for other places than that of member of that commission. We have appointed commissioners to do a great variety of things again and again by act of Congress, and even named them.

Mr. CONKLING. Will the Senator allow me to ask him a question? What is the distinction between a commissioner to obtain this kind of information and a commissioner to obtain statistical information or any of the various commissions that we have now? Why does the fact that you call him a commissioner show that he does not need confirmation by the Senate or appointment by the President?

Mr. THURMAN. I cannot go on at this time and delay the whole Calendar by arguing a question upon which the Judiciary Committee and every member of it was perfectly clear, on which there was not the slightest doubt in the world in the mind of any one of them, that this bill is perfectly constitutional. It does not interfere at all with the provision of the Constitution about officers being appointed by the President of the United States and confirmed by the Senate; and it is nothing in the world but the appointment of three persons to report certain facts to Congress, with their opinion upon them. Certainly it cannot need an argument upon the subject.

Now, one word as to this bill. I know there are enemies of this bill here; I know this bill has foes, and in the interest of certain railroads that do not want the information which will be obtained by this bill and which may enable Congress to legislate wisely instead of legislating in the dark. That certainly is very true; but in answer to the Senator from New Hampshire, [Mr. ROLLINS,] I tell him that all the members of the Senate put together have not one tithe of the information that this bill will produce if its provisions are properly executed, and he will find, if he will study these matters as much as some members of the Senate have done, that he cannot decide upon such defective statements as have been made and that investigation is necessary, and careful investigation such as this bill requires, before Congress can ever be in a situation to legislate wisely upon the questions that will come up, very shortly too, for its decision.

Mr. CHRISTIANCY. Mr. President, I will first refer to what was said by the Senator from New Hampshire, that all this information could be got without any such commission. The Judiciary Committee, and especially that portion of it that reported these railroad bills, know very well that it cannot be obtained. As the Senator from Ohio has said, not one tithe of it can be obtained in any way

that we know of in an authentic manner, without a commission of this kind. It might be picked up piecemeal by individual Senators going and inquiring into everything of that kind, but it would take months to do it, as long as it would take this commission to do it.

Now, Mr. President, a word as to the question of constitutional power. As the bill for which this is a substitute came from the House, there was a constitutional objection to it which was visible to every member of the committee. It gave them power to establish rules and regulations which were to be binding upon the companies until declared invalid by the judiciary. The committee were of opinion that we could not, without the nomination of the President and the approval of the Senate, create any such officers by a mere legislative act. This bill is one to authorize these commissioners simply to obtain information just as a committee of this body would do it if sent out. Now, as to the power of appointing a clerk, I ask if every committee of this body has not the power to appoint a clerk? That is done every day. And this is substantially a committee, and its work is only to obtain information and report to Congress. If any man can see any constitutional objection or any want of constitutional power for such a commission to appoint a clerk, he can see what I never could discover.

Mr. ROLLINS. I think it is very desirable to obtain all the information called for in this bill; but it seems to me that it is not necessary to create all this new machinery for that purpose. The bill compels the corporations to furnish the information. They may as well be instructed to furnish the information to one man as to three and so avoid the necessity of having three, or they may be directed by the law to furnish the information to some present officer of the Government, the Secretary of the Interior for instance. I see no necessity whatever for this machinery, for creating these new offices, for adding this additional expense to the Government. The companies may as well furnish the information to the Secretary of the Interior as to any new officer created.

I agree with the Senator from Ohio that it is necessary to have this information and that it should be furnished and furnished in a speedy way, but I see no necessity for its being done in this particular way.

Mr. McDONALD. Mr. President, the reason for the presentation of this bill by the Judiciary Committee is about this——

Mr. ROLLINS. Let me ask my friend who is on the Judiciary Committee, before he proceeds further, if this bill has been considered by the Railroad Committee of the Senate at all?

Mr. McDONALD. Not that I know of. I do not know that it is necessary that the Railroad Committee should consider it. During the course of the session various bills were by the Senate referred to the Judiciary Committee on the subject of what is called the "prorating" of freights and passengers over the roads that were constructed under the acts of 1862 and 1864 for the purpose of completing a railroad and telegraph line from the Missouri River to the Pacific Ocean. The bills that were referred to the Judiciary Committee on that subject were numerous, and some of them very complicated. After having given such consideration to those measures as the committee could, we became satisfied that we did not possess the information, and we were satisfied that the information was not in the possession of the Senate or accessible to it, upon which intelligent legislation could take place.

The act of 1864 declared that these several roads should be operated as one line, and that there should be no unjust discrimination for

freights or passengers carried over any portion of these lines. After having given such consideration to the question as we could, we became satisfied that the best thing we could do would be to provide some means by which this information could be brought officially and correctly before the Senate, and this bill was the result of that deliberation. As to the persons named and the nature and character of their positions, the bill very clearly defines that they are commissioners appointed for the purpose of ascertaining certain specific facts set forth; and they are required to make their report to Congress, as amended now by one of the members of the Judiciary Committee who reported it, on the first Monday in December next, so that at the beginning of the next session of this Congress we may have before us that information which will enable either the Judiciary Committee or any other appropriate committee of the Senate, or the Senate itself, to take such cognizance of these questions as the interests of the public and as the interests of these various branches may require. There is nothing at all that creates them officers. They are simply appointed to gather information for legislative purposes and for no other; their powers extend nothing beyond that; and they are to accompany their report of these statistics with such suggestions as they may think the facts they have thus gathered may warrant.

Mr. PADDOCK. Mr. President, I am, for one, just as much in favor of this investigation as the Senator from Ohio or the Senator from Indiana; but in the first place, it is my judgment that the Government directors who are appointed especially by the President to look after the interests of the United States should perform the duties prescribed in this bill. They are duties exactly such as they are called upon under their warrant of authority to perform.

Mr. THURMAN. Will the Senator allow me to interrupt him?

Mr. PADDOCK. Permit me a moment. I will say that one at least of the gentlemen who have been named for this commission is himself a Government director.

Mr. TELLER. Which one?

Mr. PADDOCK. Mr. Adams. And it seems to me it might be well enough to pass this bill to charge the Government directors with these specific duties, if they are not sufficiently in a general way charged with them. I should be willing to charge them specifically by such an act as this with the performance of these duties, and let the matter rest there. But if it is thought not to be sufficiently comprehensive, if it is thought the inquiry will not be sufficiently searching through the Government directors, then let us have this commission, but let us have it set up on economical principles. I cannot see myself how it is necessary that a commission of three men sitting for a long time should require two clerks. All I have to say about it is simply in the interest of economy.

Here is another board, another commission, where you have five men whose expenses are paid for a certain portion of the year. It does not make any difference, for present purposes, by whom they are paid; they are paid by somebody to perform these very duties and other duties. Now you set up another commission, a commission of three men, and you propose to pay them, as I see by the bill, 50 per cent. more than members of Congress and Senators themselves receive for the onerous duties which they perform, and then you authorize them to have two clerks who are to be paid extravagant salaries.

I say that this is a stupendous and extravagant performance, at least it seems so to me, for a Government that is undertaking to collect

a debt which it says is due and past due from companies; a part of whom say they are insolvent and are unable to pay anything whatever. It seems to me that the Government, if it pursues this inquiry, if it takes this course in reference to these collections, ought itself to set an example of economy to these companies.

Mr. TELLER. For the first time within the last half hour I have examined this bill; and I think from a hasty examination that if a bill of this character should pass at all, perhaps it is as little objectionable as can be expected.

The bill provides in substance for an expenditure of $38,000 on the face—in reality a very much larger expenditure of money. I should like some member of the committee to state the propriety of allowing the clerks $300 a month when a good clerk can be hired in any portion of the country for $150 a month. The commissioners are allowed $800 a month when a very good man can be hired in all departments, especially of railroading, for less than half that money.

We have already legislated, so far as this body is concerned, for the Kansas Pacific and the Central Pacific and the Union Pacific Railroads. We have disposed of those cases; and we assumed when we legislated that we had sufficient knowledge to legislate on the subject. Now, after all the legislation in reference to the large and important interests of the roads with which the Government is connected has been disposed of, we are told by the Judiciary Committee who reported these several bills that they were entirely in the dark. I can readily believe it after having read the bill that passed to-day, and I can fully agree with the Senator from Ohio that the committee did not have information such as they ought to have had. I think the committee might have got that information without the expenditure of fifty or seventy-five thousand dollars a year. I think everything that is here sought can be got in the Library of Congress. Perhaps it is possible that what the eighteenth clause of section 2 requires as to the running arrangements of these companies might not be obtained there. What particular benefit Congress would derive from knowing what the contracts were in reference to the running arrangements of the roads I am not now prepared to say.

It seems to me that a good deal less salary would do these commissioners, half of it, and certainly half of it would do the clerks.

It seems to me also that the objection raised by the Senator from New York that these are officers who are being established is very good. The honorable Senator from Ohio says they are not officers, and yet he says:

> The said commissioners and clerk shall be sworn to the true and faithful discharge of their duties before entering upon the same.

In every element they are officers as much as if they were appointed by the President of the United States, and yet we assume to legislate them in office by this bill.

If this information is desirable, as was suggested by the Senator from Nebraska, I think a simple bill making it the duty of the Government directors to furnish it could be passed here without any delay, and it would answer every purpose and save the Government fifty to seventy-five thousand dollars which will be expended if this bill is passed.

Mr. THURMAN. Mr. President, in the first place the Government has no directors except upon one road, the Union Pacific, and this bill embraces more roads than the Union Pacific.

Mr. CONKLING. Is either of these men a director now?

Mr. THURMAN. Mr. Adams is appointed one, but he has not ac-

cepted, and I suppose if he discharges these duties he will not accept the directorship, and the President will appoint some one in his place. That is a sufficient answer to the suggestion in respect to the Government directors.

There are Government directors on but one single road, and these commissioners will have to consider other roads than that one, and especially another road between whom and the Union Pacific road this controversy mainly arises, and it ought not to be simply referred to the Government directors of the Union Pacific road when the question is between the Union Pacific road and half a dozen others.

I am a little surprised at this talk about one clerk to be employed three or four months; that is all there is of it, and the whole amount of his salary probably will not exceed $600 or $700. The Government of the United States has incurred more cost since this debate has taken place about this one clerk than would have paid all his salary. Something was said of paying him as high as $300 a month. The commissioners will not pay $300 a month if they can get a good and efficient clerk for $150 a month. They can be trusted not to do that. But one reason why that amount is put in is because it is a mere temporary employment and you cannot get a first-rate clerk to leave his business and be in temporary employment for three or four months alone at the same rate at which you could get a clerk who was employed permanently. That is all there is of that. But I will not take up time about a few hundred dollars here or there.

But now, in respect to information which is required here, I say the more you examine into this matter, the more you study it—and I am sure I have devoted far more of my time to it than I ever expect to devote again or ever intend to devote to it—the more you will be convinced of the absolute necessity of such an investigation as this and of having something official for us to act upon. Why, sir, the Judiciary Committee were two months before we could get all the reports of the Central Pacific and Union Pacific Railroads, and when they sent to us all the reports that were in the Interior Department we found they were scarcely worth the paper they were written upon so far as information was concerned, and we were delayed for more than a month in trying to find out what we did eventually find out, and then not in as satisfactory a manner as we could have wished. There is a necessity for this information and for having it in a compact and comprehensive form and from persons upon whom we can rely.

Mr. MATTHEWS. Mr. President, I think that if my colleague will consider he will come to the conclusion that there is more in the point raised by the Senator from New York than he supposes as to the invalidity of the appointment of this board by act of Congress. I understand the provisions of this bill to be such that this board constituted by the bill is to consist of the named persons and their successors to be known as the Pacific Railroad commissioners for the term ending on the 31st day of December, 1879. But it is said in reply to the objections that these persons are not officers of the United States. It is necessary to say that in order to meet the objection raised by the Senator from New York, because the appointment of officers of the United States is regulated by the Constitution in a way inconsistent with their appointment by act of Congress.

Now, then, the question is, are these named persons who are to constitute this board officers in the sense of the Constitution, officers in the sense of the law? In reference to that, and by way of illustration, I beg to remind my distinguished colleague of the decision of the

supreme court of the State of Ohio in the case of The State on relation of the Attorney-General *vs.* Kennon and others, reported in the seventh volume Ohio State Reports, beginning on page 546.

Under article 3, section 27, of the constitution of that State, it was provided that—

> The election and appointment of all officers and the filling of all vacancies not otherwise provided for by this constitution, or the Constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the General Assembly, except as prescribed in this constitution and in the election of United States Senators.

In the case decided, the General Assembly of the State by a statute created a board, by name William Kennon, William B. Caldwell, and Asahel Medbery, charged with the duty under the statute of making appointments of those who were to be directors and trustees of various charitable and benevolent institutions of the State and of the penitentiary; and the question in the case was whether the commissioners named in the statute were officers in the sense of the Constitution, for, if they were, the General Assembly violated the Constitution in appointing them to that office. In the course of the opinion the court say, on page 556:

> What is an office? Among lexicographers, Webster defines the word to signify "a particular duty, charge, or trust conferred by public authority and for a particular purpose." In a case in 20 John., Rep. 492, Platt, J., delivering the opinion of the court, defines the legal meaning of the word to be, "an employment on behalf of the Government, in any station of public trust, not merely transient, occasional, or incidental."
>
> If we accept either or both of these definitions as substantially correct, it is clear to our minds that if these statutes are held valid, these defendants are officers. Theirs is a public duty, charge, and trust conferred by public authority for public purposes of a very weighty and important character. Their duties, their charge, and trust are not transient, occasional, or incidental, but durable, permanent, and continuous.

Mr. McDONALD. I should like to ask the Senator from Ohio if this commission is not exactly within that last definition? They are charged with a duty that is transient and incidental.

Mr. MATTHEWS. Certainly, according to the provisions of the "amendment intended to be proposed" by the Senator from Indiana now on his feet, it does not come within that description.

Mr. McDONALD. Those amendments are not offered and are not now before the Senate. It is the bill as reported by the Senator's colleague from the Committee on the Judiciary which simply does provide for this incidental service, the collection of information for the Senate.

Mr. MATTHEWS. What is meant by "incidental;" what is meant by "temporary;" what is meant by "transient and occasional" as contrasted with "durable and permanent?" This is a body that is to continue in existence for a certain term, namely, until January 1, 1879; it not only nominates these persons, but their successors, and the vacancies are to be filled, whether original or subsequent, by the President. Of course Congress has a right to create a commission which shall be transient, occasional, and incidental, in respect to its duties, charge, and trust, for the purpose of assisting it in the transaction of its own legitimate legislative business, as has been done more than once, as was done in the case of the silver commission. But, as I understand this proposition, it is not for that purpose, but it is to last for a definite period fixed by statute, constituting the term of an office. In that respect it does not come, I think, within the latter branch of the alternative, but is within the point of the decision as actually made in the case from which I have read.

The fact that the term is not in its nature perpetual, does not last forever, does not diminish its quality as an office, because every office which is created is subject to the repealing power of Congress, and may last but for six months or a year. Here the duties and trusts with which this body is charged are to last at least until the 31st of December, and if the act is continued in force by another statute will go on from that time continuously and permanently so long as Congress chooses to keep it in existence, not for the purpose of serving an occasion, not merely with a view of enlightening the legislature upon a particular matter at a particular time, but to serve as a part of the permanent machinery of the Government, to enable Congress to legislate according to its will upon the information furnished by this body from time to time as long as it chooses to continue it in existence.

It seems to me, therefore, that without subjecting one's self to the charge of opposing the bill for some sinister reason, one may very well at least raise a suggestion that this is not the valid constitutional way of creating this board, because it is the creation of an office and it is the appointment to that office of persons who are to be the incumbents of it contrary to the very letter of the Constitution.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Nebraska, [Mr. SAUNDERS.]

Mr. McDONALD. I will state that at the time this bill was reported by the committee I gave notice of an amendment I should offer when the bill came up for consideration. I shall not offer that amendment.

Mr. CONKLING. Mr. President, I move to amend the amendment by striking out the provision naming these parties to the word "President" in line 5 and inserting in lieu thereof:

Three commissioners to be appointed by the President by and with the advice and consent of the Senate.

Mr. THURMAN. I rise to a question of order. The question was taken by a division or standing vote on the motion of the Senator from Nebraska to strike out "two clerks" and insert "one clerk," and there was not a quorum voting; the yeas and nays were ordered, and no business is in order until we ascertain whether there is a quorum present.

Mr. CONKLING. May I inquire of the honorable Senator by what right he has been debating since that division occurred?

Mr. THURMAN. By the right of being disorderly. [Laughter.]

The PRESIDING OFFICER. The question is on the amendment of the Senator from Nebraska, [Mr. SAUNDERS,] upon which the yeas and nays have been ordered.

Mr. CHRISTIANCY. Before the vote is taken I wish to state what considerations governed the committee in providing for two clerks instead of one. The duty of the commission is to take testimony and gather information. Now, in taking testimony, as every Senator knows who has ever served on investigating committees, one stenographer is needed to take down the testimony; another clerk is needed who can read his notes for the purpose of copying them out. Those were the considerations which governed the committee, and we thought, and for one I still believe, that there will be as much work in this investigation as two clerks can well get along with.

Mr. EATON. There appears to be not only an objection to the number of clerks, but to other features, for my friend from New York has suggested an amendment on an important point. I think, therefore, this matter had better go over.

The PRESIDING OFFICER. The Senator from Connecticut objects to the further consideration of the bill.

Mr. THURMAN. Mr. President, I think after the morning hour it cannot go over on an objection.

Mr. CONKLING. I call the Senator to order.

The PRESIDING OFFICER. The Senator from New York will state his point of order.

Mr. CONKLING. The Senator from Ohio called me to order because a division had disclosed the absence of a quorum, and he said no business was in order until the presence of a quorum was ascertained. As the rules of the Senate are not "kissing" and do not "go by favor," if that is the law against me, it is the law against the Senator. Certainly debate is as much business as offering amendments.

Mr. THURMAN. I want the call of the yeas and nays to proceed; that is just what I ask.

The PRESIDING OFFICER. Does the Senator insist on the point of order that a quorum is not present?

Mr. THURMAN. Yes, sir.

The PRESIDING OFFICER. Then the Secretary will proceed to call the roll of Senators.

The Secretary proceeded to call the roll, and Mr. ANTHONY responded to his name.

Mr. PADDOCK. Mr. President——

The PRESIDING OFFICER. Debate is not in order pending the call.

The Secretary resumed and concluded the call of the roll.

The PRESIDING OFFICER. Forty-six Senators have answered to their names upon the call. A quorum is present.

Mr. THURMAN. Now I ask unanimous consent to dispense with the call of the yeas and nays on the amendment of the Senator from Nebraska.

Mr. DORSEY. I desire to say that the Senator from California, [Mr. SARGENT,] the Senator from Virginia, [Mr. WITHERS,] and the Senator from Iowa [Mr. ALLISON] are absent upon a conference committee.

The PRESIDING OFFICER. Is there objection to the call for the yeas and nays being withdrawn?

Mr. SAUNDERS. I shall have no objection to that; I will state this, though——

The PRESIDING OFFICER. The Senator will please give way that a message from the House of Representatives may be received.

* * * * * * *

PACIFIC RAILROAD COMMISSIONERS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 1337) creating a board to be known as "The Pacific Railroad Commissioners."

Mr. SAUNDERS. I do not propose to take up the time of the Senate with this matter. It is a matter of some importance, but not very great of course. I moved the pending amendment because I believed it was on the side of economy and proper economy at that. We have been discussing this morning the subject of economy, particularly when we had a bill up to provide an increased pay for the maimed soldiers. On that bill the question was pretty well discussed whether we should vote more money away from the Treasury. Now here is a bill where we can save money without doing harm to anybody. Here is a bill that proposes to raise a commission for the purpose of doing

certain work, which might have been saved, probably, by utilizing the Government directors on one of the roads; but inasmuch as you are raising a commission for one, I am satisfied to let it be raised for all the roads, and therefore I shall not antagonize that part of the bill.

But here is a commission raised with six individuals in it. Five of those individuals will cost the Government over $100 a day. No time is fixed when they shall commence to draw their pay, nor is there any saving clause confining them to any actual work or anything of that kind; but it says the three commissioners shall be entitled to $800 a month, and the clerks not exceeding $600 a month, making for the five, not saying anything about the engineers, over $100 a day. This may be all right. It may be that these are high-priced men and ought to have large pay. I am not raising a question about that.

Mr. EATON. I think that the objection I made is in order and that my friend is out of order. My suggestion was that this matter should go over. That was an objection made some time ago.

Mr. THURMAN. I make the point that this bill cannot go over on a single objection, and I ask that the Anthony rule be read.

The PRESIDING OFFICER. The Secretary will report the rule on the first page of the Calendar.

Mr. THURMAN. We are not proceeding under the Anthony rule now at all.

The PRESIDING OFFICER. Points of order are not debatable.

Mr. THURMAN. Well, I wish to say on this question, whether this objection carries the bill over, that is a matter on which something ought to be said. I ask that the resolution be read which was offered by the Senator from California, [Mr. SARGENT.]

The PRESIDING OFFICER. Is there objection? The Chair hears none and the Secretary will report the resolution.

The Secretary read the following resolution, adopted a few days ago on the motion of Mr. SARGENT:

*Resolved*, That, until otherwise ordered by the Senate, each morning after the disposal of the morning business, the Senate will proceed to business on the Calendar and dispose of cases thereon under the Anthony rule during the remainder of the morning hour.

Mr. THURMAN. "During the remainder of the morning hour;" that is all; and the President of the Senate has heretofore ruled that that only applies until the expiration of the morning hour, and that ended at half past twelve. Now, the Anthony rule is the only rule under which a single objection carries a bill over. We are not under the Anthony rule now at all. I moved to proceed to the consideration of the Calendar, and we are on the Calendar just as we would be on any other bill.

Mr. DORSEY. Within the last hour the Senator from Ohio himself objected to a very important measure on this Calendar, and it went over on his objection.

Mr. THURMAN. That is very true; but I did it without thinking. The Senator may move to put that bill back and I will help to get it back.

Mr. EATON. I do not think the Anthony rule has anything to do with this whatever. I think a single objection carries this over.

The PRESIDING OFFICER. The Chair sustains the point of order that an objection may be interposed at any stage of the proceedings under the present call of the Calendar.

Mr. THURMAN. What is the ruling of the Chair?

The PRESIDING OFFICER. That an objection may be interposed

at any stage of the proceedings under the present call of the Calendar, and that an objection being made the consideration of the bill is dispensed with.

Mr. THURMAN. I appeal from that decision and ask the Chair to point out what authority there is for that.

Mr. MORRILL. The Senator from Ohio can better accomplish his purpose by moving that the Calendar and all other orders be postponed for the purpose of considering his bill.

Mr. CONKLING. The Chair is manifestly right in this ruling as the Senator from Ohio will see if he looks at the resolution under which we are acting.

Mr. SAUNDERS. I believe I have the floor.

Mr. THURMAN. I move to lay aside all other orders and go on with the bill.

Mr. SAUNDERS. I move that the regular order be laid aside and this bill be taken up.

The PRESIDING OFFICER. The Chair decides that under the rule under which we are now acting the Senate may at any time "otherwise order" in regard to any pending business. It is in the power of the Senate to control the order under which it will proceed, by a majority.

Mr. COCKRELL. I understand the Senator from Nebraska has made that motion.

Mr. SAUNDERS. I make the motion under that ruling that we now lay aside for the time being the regular order to go on with this bill.

The PRESIDING OFFICER. The Senator from Ohio had previously made that motion. The question is on that motion.

The question being put, there were on a division—ayes 22, noes 15; no quorum voting.

The PRESIDING OFFICER. What is the further pleasure of the Senate? The only motion now in order is for a call of the Senate or that the Senate adjourn, neither of which is debatable.

Mr. MORRILL. Let us have a call.

Mr. DAVIS, of Illinois. Let us have another division. There is a quorum here.

The PRESIDING OFFICER. The want of a quorum having been disclosed, the only motion in order is for a call of the Senate or that the Senate adjourn.

Mr. COCKRELL. I move a call of the Senate.

The PRESIDING OFFICER. The Senator from Missouri moves a call of the Senate.

The motion was agreed to.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll of Senators.

Mr. MERRIMON. I beg to state on behalf of my colleague [Mr. RANSOM] that he is absent on a conference committee.

The PRESIDING OFFICER. The call of the roll discloses the presence of fifty-six Senators. There is a quorum present. The question recurs on the motion of the Senator from Ohio to postpone the Calendar and proceed with the bill which has been under consideration.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Nebraska, [Mr. SAUNDERS,] upon which the yeas and nays have been ordered. Is the call for the yeas and nays insisted upon? The Secretary will call the roll.

Mr. COCKRELL. This is on striking out "two" and inserting "one." I hope it will be voted down.

Mr. HOAR. I understood the call for the yeas and nays to be withdrawn.

The PRESIDING OFFICER. The Chair asked if there was objection to the withdrawal of the call for the yeas and nays, and no response was made. Having been ordered, the only thing is to go on with the call of the roll.

Mr. HOAR. I ask the Chair to put the question on that again.

The PRESIDING OFFICER. Is there objection to the withdrawal of the call for the yeas and nays on the amendment of the Senator from Nebraska? The Chair hears none, and the call is withdrawn. The Chair will put the question on the amendment by sound.

The amendment to the amendment was rejected.

The PRESIDING OFFICER. The question is on the amendment of the Committee on the Judiciary.

Mr. TELLER. I wish to offer an amendment to the substitute. I move to strike out in the first section the third and fourth lines and part of the fifth line down to and including the word "successors," and to insert:

There shall be appointed by the President, by and with the advice and consent of the Senate, two commissioners and one officer of engineers, to be detailed by the President, and they and their successors.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Colorado to the amendment of the Committee on the Judiciary.

The amendment to the amendment was rejected.

Mr. TELLER. I move to strike out, in the fourth line, on page 6, the words "eight hundred" and to insert "four hundred and sixteen;" so as to make the salary of the commissioners $416 a month.

Mr. PADDOCK. I should like to inquire of the Senator from Colorado, why it is that he names exactly that sum, $416. It seems to me a strange sum.

Mr. TELLER. I will say that $416.67 is the compensation paid to Members of Congress and Senators for each month. I thought it would be well to make a little difference between the commissioners and members of Congress, and so I struck out the cents. It seems to me that, if $416.67 is a proper compensation for members of the House and members of the Senate generally, these commissioners are not likely to earn much more than $416. If any Senator is very particular about the amount being the same as that allowed Members and Senators, I should not object to the amendment being made, but it does seem to me that $800 per month is an unreasonable sum for the service required.

Mr. THURMAN. One word. The Senator from Colorado serves three months in one year, December, January, and February, and he gets nine months' pay when he is at home. We propose that these commissioners shall serve all the time for which they are to be paid. I do not think his illustration, therefore, of the salary of members of Congress has much to do with this case. But here is an employment that lasts only for three or four months, for which we want to get the very best and ablest men who can be got, so that the facts which they report to Congress and their opinions may be something upon which reliance can be placed. We do not want to go higgling about to find some fellow to take the contract below the minimum.

Mr. TELLER. It is a rather remarkable statement made by the Senator from Ohio that a Senator serves three months in the year

when the Senate has been now in session over eight months, when every Senator knows that a Senator does not discharge his whole duty to his constituents and the Government by coming here and sitting during the session merely, that he is called upon at all times during the year to discharge duties that devolve upon him by virtue of his position; and if that is an ample compensation for him I submit these gentlemen who are furnished dead-head passes from the railroad by this law, who are furnished clerks at $300 a month, and have all their expenses paid, may possibly sweep along with $416 a month. I venture to say that quite as much talent can be employed for $416, if it is left to the discretion of the President, as has been indicated by the selection of these gentlemen in this bill.

Mr. CHRISTIANCY. I differ entirely from my friend from Colorado. The men we seek to get upon this commission are men thoroughly posted and well acquainted with railroad matters, men who to-day can command salaries of $10,000 to $15,000 per year. If we want novices, if we want men who know nothing about railroad matters or anything else particularly, I have no doubt we can get them cheap; I presume we can get them for a thousand dollars a year; but that is not the class of men we want to consider these weighty matters. We want experts of the highest character and we must pay them well or we shall not obtain them. That was the view of the committee, and it seems to me it is plain common sense in a matter of this kind.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Colorado to the amendment of the committee.

The amendment to the amendment was rejected.

Mr. HILL. It does seem to me that the proposed compensation of $800 a month is very large and I think unnecessarily large. I thought the sum proposed by the Senator from Colorado was rather low. It seems to me about $600 a month would be right, especially $625, which would be a salary of $7,500 a year. That in these times is a good salary, a big salary. I move to strike out "$800" and insert "$625." I think it sufficient.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Georgia to the amendment of the committee.

Mr. PADDOCK. I suggest to the Senator from Georgia that he make it just even $600 rather than $625.

Mr. HILL. Well, $625 a month makes a salary of $7,500 a year. It is just an exact compromise between the proposition of the committee and the proposition of the Senator from Colorado which was voted down, and that is why I put it at $625.

Mr. CHRISTIANCY. I am not posted as to the exact amount that Mr. Fink, of Kentucky, receives, who is one of the best railroad men in this country and is so known among all who know anything about railroad matters, but I am quite confident he is receiving at least $10,000 a year in the position he now holds. Then beyond that it must be considered that this is but a temporary employment from the time this bill becomes a law up to the 1st day of January next. To men of that capacity, occupied as they are, even if their existing salary were six, seven, or eight or nine thousand dollars a year, would they give up the position they hold to take this temporary employment with any such compensation as that? It seems to me wholly improbable.

Mr. ROLLINS. Does the bill require that the appointees shall give up their present employment and devote themselves exclusively to this business?

Mr. CHRISTIANCY. Any commissioners appointed under the bill will have to give up their present positions while they occupy this place, for it will occupy all their time.

Mr. ROLLINS. Then I think their salary ought to be pretty high.

Mr. HILL. They have their transportation free, and they get $7,500 a year under this amendment.

Mr. THURMAN. I am willing to let the amendment offered by the Senator from Georgia be adopted.

The amendment to the amendment was agreed to.

Mr. PADDOCK. In section 4, line 4, after the word "each," I move to insert "while actually so employed;" so as to read:

Shall be paid a salary at the rate of $625 per month while actually so employed.

Mr. THURMAN. There is no objection to that.

The amendment to the amendment was agreed to.

The amendment of the Committee on the Judiciary, as amended, was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

Mr. PADDOCK. I should like to inquire what has become of the amendment of the Senator from New York?

The PRESIDING OFFICER. It was not in order when it was suggested, and was therefore withdrawn.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

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## HOUSE OF REPRESENTATIVES.

JUNE 8, 1878.

* * * * * * *

The House having under consideration the bill (H. R. No. 4399) to establish a Pacific Railroad commission, reported from the Committee on Pacific Railroads by Mr. RICE, of Massachusetts—

Mr. RICE, of Massachusetts, said:

Mr. SPEAKER: During the early part of the session the Committee on the Pacific Railroads listened to an able and elaborate discussion of the intricate and important questions involved in the so-called

PRORATE CONTROVERSY.

The whole legislation of Congress in regard to Pacific Railroads was in this discussion brought under examination. That legislation commenced with an act passed July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and includes no less than fifteen different acts, the last of which, providing for a sinking fund for two of the roads, we have passed at the present session. They relate to no less than seven railroad companies, with a general provision relating to any other railroad companies which may form connections with them. Their provisions are numerous, comprehensive, and minute. They are all framed upon a general scheme, to the development of which they are generally consistently and wisely adapted. They establish between the several companies and their respective roads most intimate and delicate relations.

Appropriating to the construction of these roads a bounty unstinted in liberality, this legislation unites these companies and their roads into a system intended to extend to all, so far as possible, the advantages enjoyed by each, and to promote their common prosperity and their capacity for discharging the services required from them, by conferring upon them mutual rights and privileges and exacting from them mutual duties and obligations. This system was also intended to promote equally, so far as possible, the interests of the differnet, and to some extent rival sections of country east of the Mississippi. As might be expected, differences early arose in the management of these different companies. Abandoned by the Government and left without the control of any central authority or common arbiter which could maintain them in harmony, they fell under the management of men of great business experience and capacity, generally arbitrary and self-willed, eager to promote and defend their own interests against all the world besides. In the fierce contention and turmoil of rivalry which ensued, the original scheme of the roads was lost sight of. The companies, intimately related in the acts by which they were created and subsidized, have been aliens to each other in their operations. The congenital bonds by which they were united for the common welfare have been sundered. Their stock has been bulled and beared in the city exchanges; now one and now another being the favorite of speculators. The strong lines have crowded the weaker to the wall. The traffic legitimately belonging to one has been diverted to another. States and cities have been deprived of the advantages carefully secured to them by the original legislation, and Territories reduced to the condition of tributary provinces by the very agencies which had been created for their use and convenience.

These grievances at last became intolerable. The weaker corporations were unable to maintain themselves. The people of these States and Territories, smarting under the sense of disappointment, found themselves threatened by dangers of oppression and monopoly too great to be longer silently borne. They have invoked to their relief the sovereign power of Congress. They ask that the same authority which created, nourished, and fed these corporations shall be again exercised for their regulation and restraint, so that their original purpose may be at last assured. Although the discussions before the committee were confined to the roads belonging to the Union Pacific system, yet in our deliberations we became satisfied that like evils exist, or may be anticipated, in the operation of all the roads subsidized by the National Government belonging to the several transcontinental systems. The power and the duty of Congress to correct these evils extend equally to them all, and we have therefore included all of them in the proposed measure of relief.

THE PACIFIC RAILROADS ENUMERATED.

I introduce here, for convenience of reference, a schedule of these roads, giving their names, dates of congressional grants to them, number of acres granted, their length, terminal points, and the authority incorporating them:

| Name of company. | Date of grant. | Quantity of land granted. | Length of road. | Point of beginning, (town.) | Point of ending, (town.) | Incorporated by, (State or Territory.) | Remarks. |
|---|---|---|---|---|---|---|---|
| | | *Acres.* | *Miles.* | | | | |
| Central Pacific | July 1, 1862, and July 2, 1864. | 8,000,000 | 690.3 | *Sacramento, Cal | Ogden, Utah | California | Construction completed. |
| California and Oregon | July 25, 1866 | 3,000,000 | | *Roseville, Cal | Boundary line between California and Oregon. | do | In process of construction, and number of miles of entire length not known. |
| Oregon and California | do | 3,500,000 | | *Portland | | Oregon | |
| Oregon Central | May 4, 1870 | 300,000 | | †Portland, (west) | Astoria, Oreg | do | Do. |
| Union Pacific | July 1, 1862, and July 2, 1864. | 12,000,000 | 1,085.88 | *Omaha, Nebr | Ogden, Utah | Congress | Construction completed. |
| Kansas Pacific | July 1, 1862, July 2, 1864, and Mar. 3, 1869. | 6,000,000 | 638.6 | *Kansas City, Mo | Denver, Colo | Kansas | Do. |
| Denver Pacific | March 3, 1869 | 1,000,000 | 106.00 | *Denver, Colo | Cheyenne, Wyo | Colorado | Do. |
| Sioux City and Pacific | July 2, 1864 | 45,000 | 101.77 | *Sioux City, Iowa | Fremont, Nebr | Iowa and Nebraska. | Do. |
| Burlington and Missouri, in Nebraska. | do | 2,441,600 | 190.75 | *Plattsmouth, Nebr. | To junction with Union Pacific near Ft. Kearney. | Nebraska | Do. |
| Western Pacific | July 1, 1862, and July 2, 1864. | 1,000,100 | 103.16 | *San José, Cal | Sacramento, Cal | California | Do. |
| Central Branch, Union Pacific. | do | 245,166 | 100.00 | *Atchison, Kans | Waterville, Kans | Kansas | Do. |
| Northern Pacific | July 2, 1864 | 47,000,000 | | *Duluth, Minn | New Tacoma, Wash | Congress | In process of construction and length of road not known. |
| Atlantic and Pacific | July 27, 1866 | 40,000,000 | | *Springfield, Mo | San Francisco Cal, | do | Do. |
| Southern Pacific | do | 5,500,000 | | *San José, Cal | To point near Ft. Mohave, Cal. | California | Do. |

* These points are the termini according to the lines of location, except when the roads are completed.

UNION PACIFIC RAILROAD.

Section 1 of the act of 1862 creates the Union Pacific Railroad Company, with authority to build and operate a railroad "from the one hundredth meridian of longitude west from Greenwich between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, to the western boundary of Nevada Territory." The sections immediately succeeding make the grants of right of way and the subsidies of lands and bonds, and prescribe the route of the road, and the terms upon which and the time within which the same shall be constructed. The one hundredth meridian within the limit defined in the first section is about two hundred and forty miles west of the Missouri River. This road is spoken of in different sections of the act, and the acts amendatory thereof, as the main trunk line.

KANSAS PACIFIC RAILROAD.

These matters having been dealt with in the first eight sections of the act, the ninth section authorizes the Leavenworth, Pawnee and Western Railroad Company of Kansas to construct a railroad from the Missouri River, at the mouth of the Kansas, to the aforesaid point, on the one hundredth meridian, and to meet and connect with the trunk at its initial point. This branch is called in the acts sometimes the Kansas and sometimes the Missouri Branch. It would have been about three hundred and ninety miles in length had it been built directly from the mouth of the Kansas to the original initial point of the trunk; but by the ninth section of the act of 1864 any one of the companies mentioned in the acts was "authorized to construct its road westwardly of that point, in case it should deem such westward connection more practicable and desirable."

Under the authority of this provision this company changed its route to a line considerably to the south. In the act of July 3, 1866, it was required to connect with the Union Pacific Railroad at a point not more than fifty miles westwardly from the meridian of Denver. By the act of March 3, 1869, the company was authorized to contract with the Denver Pacific Railway and Telegraph Company for the construction of its line from Denver to Cheyenne by the latter company, and the two were to form a continuous line of railroad from Kansas City, via Denver, to Cheyenne; all the provisions of law for the operation of the Pacific Railroad and its branches being made applicable to both of them. And, again, on the 20th of June, 1874, an act was passed declaring the Denver Pacific to be an extension of the road of the original company. These roads have been built, and are about six hundred and fifty miles in length, and connect with the Union Pacific Railroad at Cheyenne. The Leavenworth, Pawnee and Western Railroad Company took the name of "The Union Pacific Railway, Eastern Division," by which it is called in the act of 1864, and afterward of "The Kansas Pacific Railway Company," by which it is now known.

CENTRAL PACIFIC RAILROAD.

By the ninth section of the act of 1862 the Central Pacific Railroad Company of California, incorporated by a law of that State, was authorized to construct a railroad from the Pacific coast, at or near San Francisco or the navigable waters of the Sacramento River, to the eastern boundary of California.

By the tenth section of the act the same company was authorized to build its road eastwardly from the eastern boundary of the State until it should meet and connect with the trunk as it in the course of

its construction should be built westwardly. Accordingly, it extended its road through California and Nevada to Ogden, in the Territory of Utah, where it made connection with the trunk.

By the act of March 3, 1865, the assignment by that company to the Western Pacific Railroad Company of California of the right to construct the road from San José to Sacramento was ratified and confirmed. Afterward the two companies became consolidated and now form one corporation. Their lines are about eight hundred and eighty miles in length.

THE HANNIBAL AND SAINT JOSEPH EXTENSION.

By the thirteenth section of the act of 1862 the Hannibal and Saint Joseph Railroad Company, a corporation of the State of Missouri, owning and operating a railroad extending from Hannibal, on the Mississippi River, to Saint Joseph, on the Missouri River, was authorized to extend its road from Saint Joseph, via Atchison, so as to connect with the Kansas branch; and it was authorized, for this purpose, to use any charter granted by the Legislature of Kansas. It procured a charter with the corporate name of the Central Branch of the Union Pacific Railroad Company, and has built its road 100 miles; but by reason of the diversion of the Kansas branch, it has not connected therewith.

THE IOWA BRANCH.

By the fourteenth section of the act the Union Pacific Railroad Company was authorized to build a road from the western boundary of the State of Iowa, at a point to be fixed by the President, to the initial point of the trunk. This road is called in the acts the Iowa branch. It has been built, and forms a direct and continuous line with the trunk from the river to Ogden, a distance of 1,032 miles.

SIOUX CITY AND PACIFC RAILROAD.

In the same section that company was required to construct a road from Sioux City, in the State of Iowa, to some point on the Iowa branch or to the initial point of the trunk.

By the seventeenth section of the act of 1864, the Union Pacific Railroad Company was relieved of the obligation of building the Sioux City branch; and it was provided that it should be built by such company, organized under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States should designate for the purpose. He accordingly designated the Sioux City and Pacific Railroad Company, which was incorporated under the laws of the State of Iowa. It has built the road; sixty miles being within the State of Iowa, and forty within the State of Nebraska; and it connects with the Union Pacific Railroad at Fremont.

THE BURLINGTON AND MISSOURI RIVER RAILROAD EXTENSION.

By the eighteenth section of the same act, the Burlington and Missouri River Railroad Company, an Iowa corporation, with a road in process of construction from Burlington, on the Mississippi, to Plattsmouth, on the Missouri River, was authorized to extend its road through Nebraska and connect with the Union Pacific Railroad at a point not farther west than the one hundredth meridian. Subsequently, that company was authorized to assign all its rights, privileges, and franchises to a Nebraska corporation. Afterward a corporation was organized, under the name of the Burlington and Missouri Railroad Company in Nebraska, and it has built its road from Plattsmouth a distance of 200 miles to Kearney Junction, where it meets and connects with the Union Pacific Railroad. Grants of right of way and of land subsidy were made to the Burlington and Missouri Railroad Company, and all the privileges and immunities granted to the Hannibal and Saint Joseph Railroad Company were conferred upon it.

It will be observed that the acts provide for one main trunk line, beginning on the one hundredth meridian, to be built by the Union Pacific, a Federal corporation, and running west to a connection with the road of the Central Pacific, a State corporation. They also provide for branches at its east end—one the Kansas branch, one the Hannibal and Saint Joseph extension, one the Burlington and Missouri extension, one the Sioux City branch, and one the Iowa branch; all of which are to be built by State companies except the last.

THE CALIFORNIA AND OREGON COMPANIES.

There are many notable features of the Union Pacific Railroad acts demanding attention, but I reserve them for future notice, in order in this immediate connection to state the provisions of the Federal statutes relating to the other companies mentioned in the second section of the bill. The California and Oregon Railroad Company was organized under an act of the State of California, with authority to build its road from some point to be selected by it on the Central Pacific Railroad, in the Sacramento Valley, to Portland, Oregon. By an act of Congress passed July 25, 1866, a grant of land was made to the company, and by the same act the road was required to be of the same gauge as the Central Pacific, and it was also required to operate its road as one connected continuous line with that of the Central Pacific.

The Oregon and California and Oregon Central Companies are Oregon corporations. Their roads are extensions in that State of the California Company, and have been aided by congressional land-grants with the same provisions as that to the California and Oregon Company.

These companies have been consolidated by State legislation with the Central Pacific Railroad Company, and their lines are now in process of construction.

THE DENVER PACIFIC RAILROAD.

The Denver Pacific Railroad and Telegraph Company was incorporated by an act of the Legislature of Colorado for the construction of a road from Denver to Cheyenne, a distance of 106 miles. The provisions of the acts of Congress relating to it have already been sufficiently mentioned.

THE NORTHERN PACIFIC RAILROAD.

The Northern Pacific Railroad Company was incorporated by act of Congress passed July 2, 1864, for the construction of a railroad from Lake Superior to Puget Sound, and is in process of construction.

THE ATLANTIC AND PACIFIC RAILROAD.

The Atlantic and Pacific Railroad Company was incorporated by act of Congress passed on the 27th of July, 1866, with authority to build a railroad from Springfield, in Missouri, upon a route prescribed with considerable particularity, to the Pacific. Authority is given to the Southern Pacific Railroad, a company incorporated under the laws of the State of California, to connect with the Atlantic and Pacific Railroad, and the two are required to have uniform gauge and rates of fare and freight, and to the last-named company a grant of land is made to the same extent as to the Atlantic and Pacific. These roads are now in process of construction.

THE SOUTHERN PACIFIC RAILROAD.

The Southern Pacific has been built from San Francisco to Fort Yuma, on the eastern boundary of California, and proposes to extend its road eastwardly.

I have now mentioned the provisions of the Federal statutes authorizing the construction of the roads of the several companies mentioned in the second section of the bill, pointed out the origin of their corporate existence, and described the routes upon which they have been or are expected to be built. The controversy which has given immediate occasion for the legislation proposed in this bill is confined to the companies mentioned in the acts relating to the Union Pacific system. I shall, therefore, address what I have to say more particularly to those companies and the provisions of law relating to them. The circumstances do not render it necessary to speak particularly of the other companies and the acts in which they are dealt with.

A SURVEY OF THE ACTS RELATING TO THE UNION PACIFIC SYSTEM.

The original scheme of a line of railroad with several branches, provided in the act of 1862 and the acts amendatory thereof, was conceived in a wise and comprehensive spirit, and was developed in numerous and extended details, well adapted to the purposes in view. If in some respects it has disappointed the expectation of its framers, these imperfections are such as are common to all human laws. I desire to draw special attention to two features of this body of legislation. The first is the large power reserved by Congress over these works. Besides the fact, peculiar to the Federal corporation, that the Government should have representation in its board of directors, it was provided in the sixth section of the act of 1862 that the munificent grants of lands and bonds made to all of the companies were "upon the condition that the companies should pay the bonds at maturity and keep their roads and telegraph lines in repair and use, and at all times transmit dispatches over their telegraph lines, and transport the mails, troops, munitions of war, supplies, and public stores upon the railroad for the Government" whenever required to do so. And in the seventeenth section it was provided that if any of the companies should fail to comply with the terms and conditions of the act within a reasonable time, or should not keep their roads in repair and use, Congress might provide therefor, and apply their revenues to reimburse the United States for such expenditures.

Again, the fifth section provides that upon a failure of one of the companies to redeem the Government bonds at their maturity, its road, with all its rights, functions, immunities, and appurtenances, may be taken possession of by the Secretary of the Treasury for the use of the United States. In the fourth and other sections, provision is made for an examination, approval, and acceptance of the roads by commissioners appointed by the President for the purpose. By the twelfth section, the gauge and maximum grades and curves are prescribed. And in the eighteenth section the power is reserved to Congress, under certain circumstances, to regulate rates of fare, and also to alter, add to, amend, or repeal the act; and the same power is unqualifiedly reserved in the act of 1864. In the twentieth section of the act of 1862 all of the companies are required to make annual reports to the Secretary of the Treasury, showing their condition in great detail. There are in the amendatory acts many other similar provisions. I have thus cursorily reviewed these clauses for the purpose of drawing attention to this patent fact, that Congress designed to assert for itself the power, and also to exercise it, of regulating and controlling the mode and manner of construction of the roads, and especially of securing their maintenance and operation, in furtherance of the original design, at all times thereafter. In this respect this legislation differs widely from previous acts making grants of land to transpor-

tation companies. When once the works of those companies were constructed, the power of the Federal Government over them ceased; but in respect to the companies here under consideration, the largest powers are reserved to be exercised in the future in order to secure the great purposes of the acts.

THE SYSTEM OF THE UNION PACIFIC COMPANIES.

The other feature of this legislation to which I would draw attention is the relation of these companies to each other. They are not separate, distinct works, although built by separate, distinct companies. They are related to each other in a most intimate way. And this appears not from single terms or clauses. All of the provisions of the act look in one direction; namely, to the establishment of a system of roads built upon a uniform plan, and to be operated in harmony. The survey of the acts already presented displays this feature to view. From that survey, it appears that the roads were to consist of one main trunk-line, commencing on the hundredth meridian, and of several branches. These words "main trunk-line" and "branches" continually recur.

In this connection the provision prescribing a uniform gauge for all the roads is to be noticed. Section 12 of the act of 1862 provides—

That the track upon the entire length of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that when completed cars can be run from the Missouri River to the Pacific coast.

The act further, throughout all the sections providing for branches, requires that their tracks shall meet and connect with those of the other roads. Thus, the Leavenworth, Pawnee and Western Railroad Company is, by section 9, authorized to build its road from the Missouri River to the hundredth meridian, where it was to "meet and connect" with the trunk at its initial point. And not only in the act of 1862, but in all the subsequent acts, this requirement that the tracks shall "MEET AND CONNECT" wherever one road forms a junction with another, is reiterated. Thus we have a system of roads consisting of a main trunk-line and several branches, with a uniform gauge and connection of all their tracks, as the act itself says, "so that cars can be run from the Missouri River to the Pacific Ocean." Here we have the important fact of the construction of all the roads, with the mechanical connection of all the tracks.

But, as each road was to be built by its own company, had this been all, the purpose of Congress in establishing this vast and complicated system might have been defeated by the failure of one to construct its works. Thus, had the Leavenworth, Pawnee and Western Railroad Company failed to build its road, the section of country through which it and its eastern connections run would have been entirely cut off from the system, and thus deprived of the advantages intended to be secured to it. Accordingly, to provide against this, it was provided not only that one company should build its own road, but that in case of the failure of one another company should have the right to enter upon its territory and build the road and have and enjoy all the rights, privileges, and franchises of the delinquent company. Thus, in the tenth section of the act of 1862, it is provided that the Kansas and California companies, after completing their roads, may unite with the Union Pacific in building both its trunk and its two branches, or so much thereof as should then remain to be constructed, on the same terms and conditions as are provided in the act in relation to the Union Pacific.

So, too, in the same section, the Hannibal and Saint Joseph Com-

pany and the Union Pacific are in the same way authorized to build the Kansas branch. So, too, the Union Pacific is authorized to continue the construction of its road into and through California until it should meet the road of the Central Pacific in its progress of construction eastward. And again, the Central Pacific is "authorized to continue the construction of its road through the Territories to the Missouri River on the same terms and conditions as are provided in relation to the Union Pacific until those two roads should meet and connect, and the whole line of said railroad, branches, and telegraph, be completed." But Congress seems not to have been content simply to confer authority upon one company to build the road of another. Not only was authority given, but the obligation to do so was enforced by a most extraordinary provision. That provision was that a failure to build any one of the roads, either the trunk or the branches, within a time limited, should work a forfeiture to the Government, not only of the rights and works of the defaulting company, but also of all the rights, works, and property of all the others. A provision in that respect will be found in the seventeenth section, and is as follows:

> That if said roads are not completed so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River in California, by the 1st day of July, 1876, the whole of all of said railroads before mentioned, and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling-stock, machine-shops, lands, tenements, hereditaments, and property of every kind and character, shall be forfeited to and taken possession of by the United States.

Nothing could be more significant than this stringent provision of the purpose of Congress to secure the construction of the whole system of roads. It shows the importance which Congress attached to the system as a completed whole.

Other provisions may be mentioned in this immediate connection. As has already been shown, the first eight sections of the act of 1862 relate to the Union Pacific Railroad Company, and the construction by it of the main trunk. In the several succeeding sections the branches are dealt with, and precisely the same rights, privileges, franchises, grants of right of way, lands, and bonds are conferred upon each one of them, and the same duties, obligations, restrictions, and forfeitures are imposed on each one of them, and the same regulations in respect of construction, examination, and acceptance of their several roads are prescribed, and the same large control over all of them is reserved, as are provided in the act in relation to the trunk. The provision in respect to each one of the branch companies is that it shall build its road "upon the same terms and conditions in all respects as are provided in this act in relation to" the main trunk. The trunk was not considered of more importance than any one of the branches, and one branch was not considered of any more importance than another or than the trunk. All were put upon the same footing. Absolute equality was established between them.

Still a further circumstance may be noted here. A single line of railroad running from the Missouri River to the Pacific Ocean might have been authorized, and would have answered certain purposes which Congress had in view. It would have connected the Atlantic States with our Pacific possessions, and opened to settlement and enterprise the vast and unoccupied regions traversed by it. The Government stores, troops, and mails might have been transported with perhaps sufficient speed and convenience by a single line. Had that been the limit of the purposes of Congress, four out of the five vast subsidies of lands and bonds which were made in aid of the construction of the branches

would have been saved. But, instead of providing for the construction of a single line of road, no less than five different lines were, as I have shown, authorized and required to be built. Nearly ten millions of dollars of bonds and as many acres of land were given in aid of the construction of branches over and above what would have been required to secure the construction of a single line. It was with a lavish hand that Congress dispensed the public domain and public treasure to secure the construction of this great transcontinental system of railroad and telegraph. But when the full measure and import of the system is comprehended, the purpose in view is seen to be fully adequate to the vast expenditure.

We are not left in doubt what the object of Congress was in providing for several branches instead of a single line of railroad. We have not far to search in order to discover it clearly set forth in the acts. In the ninth section of the act of 1862, where provision is made for the construction of the Kansas branch, it is required to commence its road "on the Missouri River at the mouth of the Kansas on the south side thereof, so as to connect with the Pacific Railroad of Missouri." This last-named company had constructed its road from Saint Louis to Sedalia, and was continuing its line to the mouth of the Kansas. The Kansas branch, therefore, was required to connect with it for the purpose of bringing Saint Louis, and the sections of country to the east and south of it, into connection with the Union Pacific system. The next branch was the extension of the Hannibal and Saint Joseph Railroad, which ran across the State of Missouri from Hannibal, on the Mississippi River, nearly opposite the city of Quincy, to Saint Joseph, on the Missouri; and this road was to be brought into connection with the same system. The next branch was the extension of the Burlington and Missouri River Railroad, which ran through Southern Iowa, from Burlington, on the Mississippi, to Plattsmouth, on the Missouri; and this line too was to be brought into connection with the system. What is called in the acts the Iowa branch was to be constructed "from a point on the western boundary of Iowa to be fixed by the President of the United States." This point was thus left indefinite because several roads were in process of construction across the State, but their termini on the Missouri River were as yet uncertain. The design was to have the initial point of the Iowa branch fixed where convenient connections could be made by it with these roads, and thus they also form connections with the system. The branch remaining to be noticed was that starting at Sioux City, to which place from the East roads were not likely to be built at an early day. Accordingly the Union Pacific company was required to construct that branch "whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City." When such lines should be built they, in their order, were to be by means of that branch brought into connection with the system. Thus each branch of the Union Pacific Railroad was to have an eastern connection and to form a link between the several railroads in the States and the main trunk. The design of Congress in establishing these several branches, therefore, was to unite the railroads of the East with the great transcontinental road and to afford and secure to the different sections of the country penetrated and served by those roads the advantages and facilities which these branches and the whole line afforded.

And now, it is lastly to be observed that to these provisions for the construction and maintenance of the several branches and the trunk was added another, relating to their operation. This was framed

with the same care as the others. Without it, the object of providing for the construction of the several roads with uniform gauge and connection of tracks, each running through a separate and distinct section and with its own eastern connection, would have been defeated. Each, although built to a junction with the others, might be operated separately and even in hostility to them. While it might be physically possible for cars to run over two or more of them from the Missouri River to the Pacific Ocean, the refusal of one might effectually prevent it. It was, therefore, necessary further to prescribe a rule for the operation of the roads after they had been constructed. Such a rule, supplementing the other provisions, gives efficiency and completeness to the great scheme. It is found first in the twelfth section of the act of 1862, where it is provided—

> That the whole line of said railroad and telegraph shall be operated for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected and continuous line.

The same provision is repeated again in section 15 of the act of 1864, and to it is added the further clause—

> And in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.

This comprehensive and exact rule of operation assures the success of the scheme. Its meaning is not doubtful, at least, to a certain extent. One company was to operate its road not solely in its own interest but in close connection with each and all of the others so far as was possible. It was not so to conduct its own business as to reserve to itself any preference or advantage over the business of any other company. It was to so run its trains as to make proper connections with the other roads. It was to afford to them proper terminal facilities. It was so to apportion its rates of freight and fare as to put them on a footing of perfect equality.

For instance, the Kansas branch connects with the Union Pacific at Cheyenne. Traffic originating on that branch and destined for points on the line of the Union Pacific west of Cheyenne was to be treated by the latter company at that point as it treated that originating on its own line east and destined west of that point. On the other hand, it was made the duty of the Kansas branch to receive the traffic originating on the line of the Union Pacific and destined to points on its own line just as it treated its own. It could not shut itself off from the Union Pacific by fixing its time-tables or its rates for freight or fare, or its terminal facilities, so as to monopolize the business originating on its own road. Very much as any one of the great corporations of the country having a trunk and branches—as, for instance, the Pennsylvania Central or the New York Central—operates all parts of its system in harmony, so must all of these companies operate all their roads together. Such was the scheme of the acts relating to this system of roads.

And it has been extended still further. I have already stated that the California and Oregon, Oregon and California, and Oregon Central Railroad Companies, which connect with the Central Pacific, have been consolidated with that company. The acts granting lands in aid of their construction, passed July 25, 1866, (14 Statutes at Large, 241,) require them to be built with a uniform gauge with the Central Pacific, and contain precisely the same rule of operation prohibiting discrimination as is found in the act of 1864. By virtue of this provision and the fact of their consolidation with one of the

companies named in the Pacific Railroad acts, they, too, are made members of the same system. For that reason they are brought within the provisions of this bill. The other companies mentioned in the bill, excepting the Southern Pacific, are included within its provisions, because they have been incorporated by acts of Congress with large powers of control reserved therein. The Southern Pacific, by the terms of the act making a grant of land to it, is brought into the same relations with the Atlantic and Pacific as the Oregon companies sustained to the Central Pacific, and is subjected to the same congressional authority.

But the acts which we have had under review, while associating the several companies together and uniting them in one family by congenital bonds, establish over them no supervisory authority to constrain their obedience to the rule prescribed for their operation. A law was made for their government, but was without sanction or mode of enforcement. Their relations were not only of a most important and intimate, but also of a very delicate nature, which might easily be thrown out of harmony. Each being governed by considerations of its own self-interest would be likely to construe the provisions of the acts so as to advance those interests. Such has been the result, as was shown in the discussions before the committee. While the counsel of the Union Pacific Company on the one side insisted that the legislation of Congress justified that company in maintaining a monopoly of the transcontinental business, the counsel for the branch companies, on the other side, insisted that the acts should have such construction as would practically enable them to absorb the entire business and become swollen into undue proportions by sucking the life blood of the principal road. The equality for which they contended in their own behalf could only result in inequality to the trunk. The facilities and advantages which they claim for their own traffic could result but in inconvenience and disadvantage to the traffic on the main line. Maintaining that the provisions of the law secured equal advantages and facilities for all and prohibited either favorable or adverse discrimination toward any, they required an apportionment of rates between them and the Union Pacific, based on the single consideration of distance traversed. These extreme claims made upon the one side and the other, as we are bound to believe with sincerity and candor, only show more clearly the necessity of creating some common arbiter for adjusting the differences necessarily arising between several companies so related and situated.

HOW THE ACTS HAVE FAILED TO ACCOMPLISH THEIR PURPOSES.

In the discussion before the committee it was not denied on either side that the branches were not operated with the trunk as one connected, continuous line. Discriminations by the Union Pacific against the branches, and by the Kansas and Denver Pacific against the Union Pacific, were freely admitted. Criminations and recriminations, excuses and apologies were freely indulged in; but the ultimate fact was admitted on all sides. In the operation of the trunk and the Iowa branch, both built by the Union Pacific, they form a single line; as much so as if the original act had provided for one main road commencing on the Missouri River and running west to a connection with the California company. The junction on the hundredth meridian is an inappreciable point. No station or town is there. No other road connects there. Trains passing either way do not stop there.

It will be remembered that the Sioux City branch connects with the Union Pacific at Fremont, 40 miles west of the river; the Burling-

ton and Missouri branch at Kearney Junction, 200 miles west of the river; and the Kansas branch at Cheyenne, 516 miles west of the river. A table of rates for freight on the Union Pacific was produced before the committee and attention specially called to it. Its authenticity was not denied, nor was it claimed that any change had been made from it. This table shows that Omaha rates are charged for freight coming on to the Union Pacific at Fremont, Kearney Junction, and Cheyenne, the three points at which the branches connect with the Union Pacific. No allowance whatever is made for the distances of those places from Omaha. This system of charges necessarily excludes the branches from all through business, and deprives the sections traversed by them of the advantages to which they are entitled under the law.

HOW SHALL THESE EVILS BE REMEDIED?

The question now arises, What remedy can be devised and should be applied to correct these evils? This bill does not propose to deal with the rights of these companies in any respect. It takes them as established in the acts of 1862 and 1864, and simply proposes by an act which is merely remedial in its character to provide a method of enforcing them. The question is left untouched by this bill as to the proportions in which the rates charged by the several companies for their common business shall be divided between them—whether, as has been claimed on the one side, upon the basis of mileage prorate, or, as claimed by the other side, upon the basis of a number of other material considerations securing equitable prorate. It is not proposed to regulate the times or the speed of trains or business connections of different roads, or prescribe the terminal facilities which one should provide for another or the compensations which should be paid for them. All these matters are left to be dealt with by those specially skilled in them. The bill provides simply for a commission composed of persons specially fitted by their previous experience to deal with such matters, aided by constant observation of the operation of rules which may be prescribed by them and of the current business of the companies. I propose now to show as briefly as I am able why such a remedial act is better fitted to meet the necessities of the case than any attempt to do so either by legislation or judicial action.

Railroad property is of a peculiar character, and requires, as it has received, peculiar legislation by the Government. It touches every industrial interest, agricultural, commercial, and manufacturing, at every point. The very circumstance that it requires the concentration of large capital in single hands, and especially that it may influence, favorably or unfavorably, the prosperity of the communities which it should serve, calls for special administrative regulation. The farmer in the extreme West may labor through the season for the production of his crops, and yet the price which he receives for their product is not simply a fair return for his own labor and investment, but is largely affected by what may be charged to him for its transportation from his fields to market. He may labor never so industriously; he may live never so economically; he may plan never so wisely; he may reap never so largely; and yet the railroad by which he reaches the market may, by changing its line, or station, or rates, vastly increase what he shall realize, or, on the other hand, entirely deprive him of all compensation for his labor. The manufacturer, carefully selecting the location of his enterprise, with the view of conveniently, quickly, and cheaply reaching the market with his wares, may be suddenly deprived of all the advantages which he expected

from his situation by the increase of the charges which are made against him for transportation by the railroad upon which he calculated and depends. Men are made rich and made poor, communities grow and decline, as it suits the policy of the managers of railroads.

To this vast power is added also their control over the large number of persons in their employ and dependent upon them, who naturally receive from those who hold in their hands their daily bread, to a very large extent, their opinions, prejudices, inclinations, desires. No other department of business and industry in the country has such reach and such force as the railroads. Uncontrolled by a superior power which shall regard alike the interests of all, protecting and at the same time restraining the company, and especially guarding the individual and the public, the railroad interest may absorb all others, overreach all others, dominate all others, subjugate all others. Public liberty as well as private rights may become endangered by it. We have recently seen spasmodic efforts made to control these difficulties—efforts prompted by a just sense of wrong, but abortive to a large degree because not wisely directed. Considerate men have seen and thoroughly appreciated the dangers flowing from an unrestrained railroad management, and on the other side from the popular indignation which mismanagement always arouses, and they have suggested different schemes by which these evils may be overcome, and to a degree have been modified. In many instances these attempts have been made by means of legislative enactments. Precise and inflexible rules have been thus prescribed to which all conditions have been compelled to bend.

THE REMEDY NOT TO BE FOUND IN LEGISLATION.

Statutes must be general in the rules which they prescribe and inflexible in their operation. They can provide only for such circumstances and exigencies as have occurred; they cannot anticipate such as experience has not developed. They must be positive, exact, inflexible. But the relations of railroads one to another, to the public, and the Government, change with every day in the year. The construction of new lines creates unexpected competition; the development of a new industry furnishes a suddenly increased volume of business; discovery and inventions change the expense of operation; the large crops of one year demanding increased facilities, the short crops of another year making such provision unnecessary; the large volume of business of one season and the small volume of business of another season; a foreign or a domestic war; the erection or the destruction of a manufactory, and a thousand other circumstances keep railroad property in a state of constant fluctuation. The rule which should govern it in one year or at one season is not the rule which should govern it in another year or at another season. Just and fair charges for the transportation of freight and passengers cannot be prescribed, except as many circumstances, almost daily changing, are considered.

These obvious and familiar facts are quite sufficient to show how unfit the legislature is to deal with this subject. Its members may be never so wise, never so patriotic, never so anxious to do justice on the one hand to the companies and on the other hand to the public, and yet, by reason of the very nature of legislation itself, its general character, and its inflexibility, they are unfit to deal with this subject. The attempt has been made in many States, and has failed—failed, too, after bringing upon all parties the greatest mischief. This is notably true of the Legislature of Iowa. A few years ago a railroad act was

passed in that State which undertook to deal upon an arbitrary rule with railroad charges. The effect was to put a stop to railroad construction and throw many companies into bankruptcy and seriously retard the development of the State. Instructed by this experience the Legislature of that State has recently repealed many of the provisions of law which it had enacted after mature discussion and deliberation, and in the expectation of assuring the public interests.

The relations of railroad companies to each other are especially delicate and variable. They are affected by cost of construction and cost of maintenance; cost of operation, volume of traffic, distance transported, character of freight, speed, and skill in management. They are affected further by lines of water transportation, in many cases distant from them; by the formation of competitive lines, by terminal facilities on their own lines, on connecting lines, and on the seaboard. These relations must be dealt with by persons who have devoted to their consideration much reflection, who are aided by large experience, and who are guided by the advantages of constant observation. The charge of them must, therefore, from the very nature of the circumstances, be committed to boards of control created either by themselves or by the Government. Such boards have been erected in many different States, with larger or more restricted powers, and with greater or less public advantage.

THE REMEDY NOT TO BE FOUND IN THE COURTS.

Nor do the ordinary processes of the courts of justice furnish an adequate remedy. The judicial tribunals administer the law as it has been prescribed. Their discretion may be exercised only within narrow limits. It not unfrequently happens that judges find themselves constrained by technical rules of law to disregard the particular circumstances of the case and what may seem the very right of the matter. Dealing only with cases which have occurred in past experience and bound by precedent to a further application of what has been decided, they are not able to frame their judgments with such flexibility as is necessary adequately to deal with the variable character of the relations of railroad companies to one another and the public. It is of the very essence of judicial judgments and decrees of courts, as well of equity as of law, to conclude the controversy by a final determination. From such a judicial conclusion, railroad companies are able readily to escape by some slight change of circumstances.

Thus case after case may arise and be disposed of without reaching any decisive and comprehensive conclusion. And, besides all this, litigation in the courts may be so greatly protracted that an evil complained of may become securely intrenched before a remedy can be administered. The law of judicial procedure is full of dilatory and interlocutory applications, which not unfrequently defeat final judgment, and so delay progress to it that "the law's delay" has become proverbial. The evil is the greater in controversies of the sort to be dealt with by the proposed commission, because they involve not so much private as public interests. While the cause is pending in the courts the public and the Government must stand awaiting the judgment, their rights in abeyance, their interests sacrificed.

The proposed commission will be able to deal summarily with the questions and parties brought before it. The course of procedure being special must necessarily be simple. The members will be informed by the testimony of witnesses, the allegations of parties, and the arguments of counsel. The party aggrieved and the party complained of will each have his day in court. But the subject of inquiry

will always be the very right of the matter, and to its determination the commissioners will bring an intelligent experience, and above all a personal observation. They will therefore be enabled to reach an early conclusion.

I am assured of this by my own experience. It happened recently that I was of counsel for a company which was a party to a controversy with another in respect to their occupancy of a union depot and the use of common terminal facilities and the apportionment of compensation in respect thereof.

The dispute was brought before the commissioners of railways in Massachusetts. The hearing was promptly had. A short time was sufficient for the examination of the matter, the argument of counsel, the personal observation of the circumstances, and the final decision. That decision was accepted by both parties as on the whole fair and just and was readily acquiesced in. I may be pardoned this personal reference because it furnishes an apt illustration of the operation of the methods proposed in this bill for the adjustment of the differences which this commission will be called upon to settle.

SURVEY OF LEGISLATION PROVIDING FOR RAILROAD COMMISSIONERS.

The subject of railway regulation received attention in the Parliament of Great Britain at an early day. As early as 1839 a select committee on railways appointed by the House of Commons expressed a strong opinion that a board would be required to superintend railways, "for the purpose of protecting the weak against the strong and counteracting the evils incident to monopoly." At several succeeding sessions carefully drawn and voluminous reports were presented to the Commons by their select committees. Jurisdiction over the subject was vested in the Board of Trade.

In 1873 (36 and 37 Vict., ch. 48) a board of railway commissioners was created with very large powers of supervision and control over the railways of the kingdom, and the powers of the Board of Trade were transferred to it. Among other things, the commissioners have jurisdiction to examine and approve or disapprove of agreements between two or more companies for the joint management of their railways; to regulate the gauge of roads; to sanction changes of route; to inspect and authorize the opening of new roads; to determine differences between two or more companies having a common terminus, or a portion of the same line of rails in common, or which form separate portions of one continuous line; and also to hear and decide, with all the powers of a court of justice, disputes between different companies and between any individual and one company arising under the act prohibiting discrimination. They are also vested with authority to make general rules not only to regulate the proceedings before them but also any other matters submitted to their jurisdiction. This body has more than answered all expectations, and its decisions, which, except when subject to appeal to the superior courts, have the force of law, are contained in a separate series of reports.

This matter received attention in the Legislature of Massachusetts in 1865, and in the following year an elaborate report was made to it, written by Judge Redfield. It was the subject of great consideration at each session of the Legislature until July 15, 1869, (Supplement to General Statutes, chapter 408,) when the law, which had been introduced at several previous sessions, was, without material change, enacted. It establishes a board of three commissioners, to hold office for three years, who shall have general supervision over all railroads within the State. To a very large extent the powers of

the board are those merely of examination and advice; the chief sanction attached to their orders being a report to the Legislature and the apprehension of legislative interference. At an early day jurisdiction was vested in the supreme court to fix the route of railways through cities and towns in case of differences between the municipal authorities and directors, and also determine what compensation shall be paid by one company for the use of the road of another when it has running powers over the same, and also for terminal facilities, and the extent thereof, whenever differences arise between several companies on these points. These powers are transferred to the permanent commissioners, and their decision in these respects is binding unless modified or reversed by the supreme court.

In California, an act was passed April 3, 1876, creating a board of three commissioners of transportation. It vests in the board much larger powers of supervision and control than the Massachusetts law. It is to hear and determine differences between companies which form parts of a continuous line in respect of the apportionment of their rates, the arrangement of their time-tables so as to form close connections, the terminal and other facilities and accommodations to be furnished by one company to another, and the compensation to be paid therefor, and their decision is carried into execution through the processes of the court, and is final unless modified or reversed by the supreme court. The most stringent provision is made against discrimination. In many of the other States similar boards have from time to time been created with more or less authority and with more or less public advantage. Among others may be mentioned New York, Connecticut, Illinois, Missouri, Wisconsin, Michigan, and Iowa.

The advantages which have been derived from the efforts and labor of these commissioners have been greater or less, not so much according to the proportion of authority vested in them as the wisdom with which they have administered their functions. The simple power of advice of the commission of one State has sometimes exceeded the power of conclusive judgment vested in the commission of another State. A judicial temper directed and animated by an intelligent experience, and aided by a constant observation, is the first and great pre-requisite in the constitution of a useful commission. Removed from political predilections and elevated above influences from or against the companies with which it has to deal, it is likely, whatever its powers, to accomplish great good. Beneficent results may be reached at once, but the full measure of usefulness can only be attained after protracted experience, intelligent observation, and judicious administration have developed a full appreciation of what is necessary and what should be forborne.

Against the scheme of this bill some objections of a constitutional character have been urged, which I now propose to examine.

CONSTITUTIONAL OBJECTIONS TO A BOARD OF COMMISSIONERS.

This bill vests in a board of commissioners the powers to make regulations to govern the operation and management of the roads mentioned in the second section. The question of the constitutional competency of Congress to vest such power in a subordinate tribunal may be raised. But it may be justified by the long and continued course of legislation in respect to other departments and administrative officers of the Government. For instance, in 1820 the Secretary of the Treasury was directed to make and issue from time to time such instructions and regulations to the several collectors, receivers, depositaries, and other officers receiving the public funds as he should

deem best calculated to promote the public interests. And in 1864 he was required to prescribe rules and regulations to be used under and in execution and enforcement of the various provisions of the internal-revenue laws. In 1828 he was required to establish such regulations as the President should think proper in relation to the collection of customs. And by many other acts like power was vested in him in respect of other matters committed to his administration.

Under the authority thus conferred on the Secretary, voluminous and numerous rules and regulations have been prescribed by him for the conduct of the business of his Department. The same is equally true of every one of the other great Departments of the Government. Descending from the Cabinet officers to their subordinates, we find similar powers conferred upon them. Thus, in 1866, the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, was authorized to frame appropriate regulations for enforcing and carrying into effect the laws relating to the public lands. And the Commissioner of Indian Affairs was, in 1834, authorized to prescribe regulations for carrying into effect the various provisions of law relating to the subjects committed to him. And in 1872 the Commissioner of Internal Revenue was, under the direction of the Secretary of the Treasury, required to prescribe regulations for the returns to be made by individuals for the purposes of taxation.

A very interesting instance, worthy of especial notice, is that of steamboat inspectors. The laws relating to them were of early origin and were digested in 1871. They provide for a supervising inspector-general and ten supervising inspectors, who should assemble as a board once a year in this city, and establish all necessary regulations required to carry out, in the most effective manner, the provisions of the act. And it was specially provided that these regulations, when approved by the Secretary of the Treasury, should have the force of law.

The act further provided for local inspectors. Under the authority thus conferred, rules and regulations have been prescribed for the inspection and license of vessels not only navigating the high seas but also the great rivers and inland lakes. The characteristics of our inland waters differ in many respects, so that rules proper for regulating the navigation of one are inapplicable to another, and separate sets have accordingly been necessary. Each has been made with great care and minuteness by the board, and as its members are men of experience in the navigation of different rivers, lakes, and seas, they have been able to frame their rules and regulations with great aptness. The board, also, by its rules, provides for the examination of captains, pilots, and engineers, and any one guilty of a violation of any one of these rules may be summoned before an inspector, put upon his trial, and if found guilty punished by a forfeiture of his license.

Other similar boards have from time to time been created with the same power to prescribe rules and regulations in respect of the matters committed to their administration. The powers conferred by this bill upon the board of railroad commissioners to prescribe rules and regulations for the government of the roads mentioned in the second section is not of broader or different character.

I am not aware that the power of Congress to vest such authority in subordinate tribunals and administrative officers has ever been questioned or made the subject of discussion. This feature of the bill is sufficiently vindicated by the long and uniform course of similar legislation which I have very briefly referred to.

Passing now from the question of the power of Congress to vest in the board proposed to be created authority to prescribe rules and

regulations, which may be called its legislative functions, I come to the consideration of the provision vesting in it jurisdiction to inquire into and determine differences between the companies, which may be called its judicial function. It is to be observed, in this connection, that the decision which the board may make upon any matters of dispute is not final. The company decided against may take upon itself the responsibility of refusing to obey the decision, and the burden is then cast upon the party aggrieved thereby, or the commission, of applying to the courts for the proper judicial process to compel obedience. The judicial power is confined to the simple matter of preliminary inquiry. A much larger power of judicial determination has from time to time been vested in special tribunals. An instance is that of the inquiry, trial, and determination by steamboat inspectors for offenses against their rules and regulations for the navigation of steam-vessels; their decisions are final, and may be followed by the severe punishment of excluding the offender from the prosecution of his legitimate business.

Another instance worthy of special notice is that of registers and receivers of the land offices. Persons entitled to make pre-emption of the public lands must possess certain qualifications and perform certain prescribed acts. In the act of September 4, 1841, which confers the right of pre-emption, it is provided that all questions as to the right arising between different settlers upon the same tract shall be determined by the register and receiver of the district within which the land is situated.

In 1858 it was provided that appeals should lie from their decisions to the Commissioner of the General Land Office, and his decision was made final unless a further appeal was taken to the Secretary of the Interior. These provisions of the statute were simply re-enactments of similar provisions in former acts and of the general course of procedure in the land department. The question early arose, What was the force and effect of decisions of the register and receiver or of their superior officers upon appeal?

Wilcox *vs.* Jackson (13 Peters, 498) is the leading case on this subject. It was there held that the registers and receivers were a special tribunal, and that their decisions upon matters within their jurisdiction were final and conclusive, but upon matters without their jurisdiction their decisions were void; that is to say, the same rule which is familiar to all lawyers in respect of the conclusive effect of the judgments of courts of limited jurisdiction applies to the decisions of the land officers. The question has been agitated in different forms in many cases since. The recent case of Johnson *vs.* Towsley (13 Wallace, 72) was elaborately argued by counsel, and maturely considered by the court. Every objection which could be taken against regarding the decision of the land officers as conclusive was urged, but neither in that case nor in others which have been before the court has it been claimed that it was not competent for Congress to confer upon the land officers the power of judicial inquiry and determination, and even to make their decisions final upon questions of fact when both parties had opportunity to be heard, and fraud did not intervene in the inquiry.

Another case may be mentioned, because it was also the subject of elaborate examination in the Supreme Court. As early as 1820 an act was passed providing that if a public officer charged with public funds should not duly render account therefor, the First Comptroller of the Treasury should state the account and certify it to the Solicitor of the Treasury. That officer was required to issue his warrant to the mar-

shal of the district within which the delinquent lives, commanding him to make the moneys out of the goods and chattels, lands and tenements of the defaulter by levy and sale thereof. In Murry's Lessee *vs.* Hoboken Improvement Company, 18 Howard, 31, the question was raised whether it was competent for Congress to confer on the Comptroller and Solicitor power to issue such writ, on the ground that in doing so they necessarily exercised judicial functions. That subject was elaborately discussed by Mr. Justice Curtis, delivering the judgment of the court. He said:

> It is evident that the Comptroller must, in determining whether the warrant should issue, pass upon precisely the same questions which would be submitted to a court in an action brought by the Government against the officers.

It was admitted that this was an exercise of judicial power by an administrative officer, but it was also held entirely competent for Congress to vest such power in such officers. This case, and the other instances which I have cited, go far beyond the bill under consideration. They put the determination of the officer or tribunal upon the high ground of judicial judgments. The decisions and orders of the board proposed to be created by this bill are not definitive, and cannot even be enforced except by the aid of a judicial process, and that process, too, must be invoked not by the delinquent in order to protect himself, but by the party aggrieved by his disobedience or the commission. This bill is not, then, obnoxious to any objection on the ground that it confers upon the board of commissioners either legislative or judicial powers.

POWER OF CONGRESS OVER THE STATE RAILROAD CORPORATIONS.

The relations of the several companies named in the second section of the act to the Federal and State governments furnish an interesting subject for our consideration. One, the Union Pacific Railroad Company, as has already been stated, is a Federal corporation, and was created by Congress when the whole of the regions through which it runs was territory of the United States, not within the limits of any one of the States of the Union; but each of the branches, as has also been explained, was built by a State corporation. What, then, is the power of Congress to regulate and control these several corporations as well those created by itself as those created by the States? I invite attention in the first place to the objects Congress had in view in these enactments. They are declared in the acts with a reiteration evincing singular solicitude to impress them upon this legislation. The act is entitled, not an act to incorporate the Union Pacific Railroad Company, nor an act merely making grants of land or bonds in aid of a railroad. The title is most peculiar in its character. It is "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to *secure* to the Government the use of the same for postal, military, and other purposes."

In the third section, where the grant of land is made, the same thing is again stated. It runs thus:

> That there be and is hereby granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph-line and to secure the speedy and safe transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, &c.

Turn to section 4 and we see that the title to this land passes from the Government only when this object is secured:

> That whenever said company shall have completed forty consecutive miles of said railroad and telegraph-line *ready for the service contemplated by this act*, and supplied it with all necessary drains, culverts, viaducts, crossings, &c.

Then the patents are to issue.

Again, in the sixth section of the act, the condition is annexed to the grants—

That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph-line in repair and use, and shall, at all times transmit dispatches over said telegraph-line, and transport mails, troops, and munitions of war, supplies, and public stores, upon said railroad, for the Government, whenever required to do so by any department thereof, and that the Government shall, at all times have the preference in the use of the same for all the purposes aforesaid.

In the eighteenth section the object of these acts is repeated in short and definite words. The clause reads thus:

And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

These purposes thus carefully expressed in the act itself clearly show that Congress intended to create a corporation which should be an agency of the Government for the performance of certain of its most important functions. This has been distinctly stated by the Supreme Court in the case of the Union Pacific Railroad Company *vs.* Peniston, 18 Wallace, 31. Mr. Justice Strong, speaking for the court, after mentioning several important provisions of the act, says:

They all look to a purpose of Congress to secure an agency competent and under obligation to perform certain offices for the General Government.

And again, in the case of the United States *vs.* The Union Pacific Railroad Company, (1 Otto, 72,) Mr. Justice Davis, speaking of the construction of the road, says:

This enterprise was viewed as a national undertaking for national purposes.

And in another part of the opinion he says:

The whole act contains unmistakable evidence that if Congress was put to the necessity of accomplishing a great public enterprise through the instrumentality of private corporations, it took care there should be no misunderstanding about the objects to be accomplished or the motives which influenced its course of action.

These brief extracts from the statutes and the opinions of the court are sufficient without any extended examination to show that Congress intended to and did create the Union Pacific Railroad Company to be an agency of the General Government.

It is not necessary to argue at length that an agency of the Federal Government, created by it for its own purposes, may be regulated by it. This principle was fully established in the great case of McCullough *vs.* The State of Maryland, 4 Wheaton, 316. The doctrines there expounded in the powerful opinion of Chief-Justice Marshall have passed into the elementary principles of constitutional law, and are too familiar to need repetition here. Everything which was then said of the bank as an agency of the General Government may be here said of the railroad company in its character as such.

Passing from the Federal to the State corporations, it will be observed that the same duties, services, obligations, and liabilities which are imposed by the act upon the former are exacted of the latter, without distinction, difference, or diminution. Each is to do for the Government what the other does; each is liable to the same restrictions, and even to the same forfeitures as the others. Mr. Justice Strong says, in Peniston's case, already cited:

No difference can be pointed out between the nature, extent, and purposes of the agency of the several State corporations authorized to build the branch roads and the agency of the Union Pacific Railroad Company.

So, too, the State corporations received from the Government the same aid in lands and bonds and are clothed with the same powers and rights as the Federal corporation. In these respects, also, they stand on a footing of perfect equality with the Union Pacific Company. These grants by Congress to them of subsidies and franchises were to enable them to discharge the duties imposed upon them. They all accepted these grants with these duties and conditions annexed. The grants form the consideration for their stipulation to perform their duties. The Government, which is the party paying the consideration, reserves to itself the power of compelling the performance of these duties by the agents which it has created for the purpose. These several railroad companies, State and Federal alike, thus appear to be agencies of the Federal Government, and by reason of their character as such they are the legitimate subjects of its regulation and control. And in the case of the Federal corporations, the absolute right of regulation and control is reserved in the acts of incorporation. The bill is not, therefore, obnoxious to objection because it assumes such jurisdiction over them.

EXPLANATION OF THE BILL.

The first section of the bill appoints three citizens, of national reputation, and their successors, to be a Board of Commissioners, to hold their office for three years; their successors are to be appointed by the President of the United States, with the advice and consent of the Senate, and any vacancy in their number is to be filled in like manner. One must be skilled in law and the other in railroad management.

Section 2 provides that the Board of Commissioners shall have general supervision of the roads named in it, and such others as shall receive congressional aid. The board is to have an official seal and clerk. No one of them shall be in the employ of any of the companies or have any connection whatever with them.

Section 3 imposes upon them the duty of informing themselves of the condition of the roads, and the manner of operating them, and particularly whether they furnish to the public and the Government proper accommodations, at reasonable rates, and accomplish the purposes for which they were established.

Section 4 provides that they shall establish rules and regulations to govern the operation and management of the roads so as to afford and secure to the public and the government all the advantages of intercommunication, travel, and transportation stipulated for in the acts, and to secure and enforce the reciprocal rights and duties of the companies. These rules and regulations are to be operative until revised, altered, or annulled by the commissioners or the courts.

Section 5 provides that in case of dispute between the companies as to their mutual rights and duties, or any company or individual shall have cause of complaint against either of them, the commissioners may hear and determine the matter.

Section 6 provides that when it appears to the commissioners that one of the companies is failing to accomplish the purposes of its creation they shall make rules, regulations, directions, and orders in respect of the matter in which it is delinquent not inconsistent with the provisions of the acts, nor so as to impair the ability of the company to meet the payments due by it to the Government.

Section 7 provides that upon the refusal of any one of the companies to comply with any rule or order of the commissioners, any party aggrieved thereby, or the commissioners, may exhibit his bill in the United States circuit court to compel obedience, and provision is made for bringing the cause to a speedy determination.

Section 8 requires the companies to furnish the commissioners with any information which they may need.

Section 9 provides for annual reports to be made to Congress.

Section 10 fixes the salaries of the commissioners and clerk, and provides for the payment thereof and the incidental expenses of the commission, payment of which is to be made from a fund raised by assessments of the companies, to be made for the purpose.

Section 11 preserves unimpaired the duties and obligations now imposed by law upon the companies.

CONCLUSION.

I have represented these railroads as they are traced upon the map of the western territory, that their number and magnitude and the importance of the questions affecting their management may be apparent at a glance.

I have reviewed the legislation of Congress regarding them, to recall the wise and harmonious plan of their organization, by which they are united in peculiar relations for their own and the public welfare and the careful supervision and authority of Congress preserved over all.

I have argued that the roads existing under State charters, adopted and subsidized by Congress as its agents for the performance of great public duties, having accepted the duty and the bounty, are subject to the obligations and liabilities imposed by the legislation establishing the agency and granting the bounty, and are therefore, in this respect, equally amenable to the action of Congress as roads chartered by itself.

I have stated some of the questions out of which controversy has arisen in the management of these roads, that their delicacy and difficulty of solution may be manifest.

I have endeavored to show that the conditions and relations of railroads are too manifold and fluctuating to be controlled by any fixed and inexorable system of rules and regulations established by legislation or the adjudication of courts, and that the difficulties in this respect as to these roads is greatly increased by the peculiar features of the several systems into which they were organized.

I have claimed that Congress can efficiently exercise its authority and supervision over these roads, secure to them their natural rights, and to the public the advantages to which it is entitled from them only by the active and authoritative supervision of an able, impartial, and judicious board of commissioners.

A similar conclusion has been reached by other governments whose actions are entitled to our highest respect, and the establishment of such commissions under their jurisdiction has been followed by most satisfactory results.

I have briefly stated the provisions of the bill reported by the committee, and have defended it, it seems to me, successfully against criticisms of the usurpation of legislative and judicial functions alleged against it upon, I presume, cursory and superficial examination.

And I believe that the bill is legal and constitutional in all its provisions; and that it provides the only practicable scheme by which Congress can control these corporations, peculiarly subject to its authority, and further, that only thus it can ultimately exercise its constitutional authority to regulate interstate commerce.

I have been somewhat amused, Mr. Speaker, at the evidences of alarm and apprehension exhibited by some of my colleagues on the committee in their minority report on this bill. To their startled imaginations the bill of the majority is "a Draconian device." It

seeks to transplant into the national "Eden" a "sprout of monarchy set in the soil of Massachusetts," which, for some unexplained reason, "has thus far flourished under the shadow of Bunker Hill." It provides "a triumvirate vested with legislative, judicial, and executive power." It creates "a monstrosity." "Its principles fully carried out will create a holocaust of our civil liberties."

I trust that my friends will soon recover sufficiently their equanimity and self-possession to consider intelligently the dangers which threaten us from an opposite direction to that in which their faces are now turned.

These corporations have disregarded the obligations imposed upon them. They have sought to break the bonds by which they were united in a beneficent system for the public good.

They have extorted tribute not only from the Territories through which they pass, but from the Government itself which created and endowed them.

At the outset they wasted the vast bounty conferred upon them in fraud and corruption, and their management since has too often been characterized by anything but a desire to promote the public welfare.

I could imagine, if I would, a vast monopoly, throwing its iron bands across the continent, fettering to itself by its branches on the one side the States and Territories of the North and Northwest, and on the other those of the South and Southwest, absorbing into one the three lines of transcontinental communication wisely planned in the beginning and still required for the prosperous development of the vast empire beyond the great rivers—a monster like Frankenstein's, unnatural, insatiate, powerful; vexing, defying, and finally destroying its creator, and then perishing itself, the victim of its own crimes and excesses. But I prefer to rely upon the wisdom and power of Congress, and to believe that it will exercise its authority justly, but effectively; that it will apply a remedy potent for good; that it will restore these roads to their original purpose, and make them instrumentalities of the highest good to the whole country.

Conquerors have torn down cities, to rebuild them upon a plan of greater order and magnificence; they have destroyed nationalities, that they might construct new empires upon the ruins. It has fallen to the lot of this people to rear a new empire upon a fresh and unbroken soil; but civilization reached the great rivers of the West before it fully realized the vastness and the majesty of the mission before it. There is yet time and opportunity for thought and consideration that this imperial domain be opened to settlement in accordance with some wise and premeditated system, that the arches of the new empire be reared in order and method, so that they shall not need to be removed, so that they shall not crumble, but shall remain the fixed foundations of a free civilization, whose influence and shelter shall be world-wide.

Mr. Speaker, I believe that this commission, wisely framed and properly sustained, will be a powerful instrumentality in accomplishing this result, desired, I am sure, by us all. As such I invoke for it the consideration and support of the Representatives of the people.

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JUNE 11, 1878.

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On the bill (H. R. No. 4399) to establish a board of Pacific Railroad commissioners.

Mr. COLE. Mr. Speaker, it was in the city which I have the honor in part to represent on this floor, that the grand conception of a rail-

road across the continent, over the mountains to connect the waters of the Atlantic with the shores of the Pacific, first had its birth.

The intrepid Frémont, allied to the family of the great Benton, by explorations which thrilled the country by the story of their adventures, discovered the route which made the great work possible. The great Senator of my State was the man of foresight, force of character, and persistence of effort who was fitted to seize the conception, explain it to the public apprehension, and enforce upon the public mind its possibilities.

He went even further than that; he drew out the practical details of the work, secured the incorporation of the company which he christened the Pacific Railroad Company of Missouri, attended to its efficient organization and the inauguration by it of the enterprise, and he looked forward to the day when this creature of his creation, a corporation of his own State, should consummate the achievement. Saint Louis, the capital city of the great Mississippi Valley, was to be the initial point of the road. To it as a central point of the country the lines of commerce were to converge, and from it the traffic of men and families, of merchandise and products, were to be carried on the iron way to the Golden State. In those days no other city in our land was a rival of Saint Louis. Her central locality upon the shores of the great river, which traverses the whole extent of our country from north to south, was universally regarded as fitting her for her place in the new commercial system.

In 1862 the Pacific Railroad Company of Missouri had constructed its road from Saint Louis to Sedalia, and was pressing the work forward to the mouth of the Kansas River. In the then Territory of Kansas another railway corporation had been organized, under the name of the Leavenworth, Pawnee and Western Railroad Company, for the purpose of building the road from the mouth of the Kansas through the central part of that State. The design was to follow a line of road far to the south of that ultimately adopted, and upon the route which Frémont had marked out and for which Benton claimed superior advantages.

Thus the conception was being pressed toward realization. The first propositions for Government aid for a transcontinental railroad were directed especially to these companies and to this route. A cursory view of the map of our country is sufficient to show that such route would have been most convenient for all sections of the country if but a single line of railroad were to be built. A direct line running east and west from the Atlantic to Saint Louis passes through the great valley of the Ohio. Upon or near such line lie the great cities of the country—Baltimore, Philadelphia, Cincinnati, and, but a little more remote, New York and other cities.

The line of settlements which shortly after our Independence began extending westerly ran through this great valley. Here were the older and richer of our interior communities; these sprang up and have since flourished. Into the Ohio flow from the North and from the South other great rivers, draining valleys of equal richness and in the midst of which other great cities flourish. This is the first and the greatest of the lines of internal commerce which traverse our majestic country. Even the commerce of the eastern ports might easily be conducted into this great artery. But unfortunately, as the scheme of a Pacific road was being worked out, war between the North and the South disastrously affected this natural way, and diverted to a more northerly course what otherwise would have been its own for all time to come.

The line of commerce through and near the great northern lakes, to and beyond Chicago, although of later origin than that through the valley of the Ohio, had swollen into a great volume. It had not penetrated so far into the West. It, however, accommodated a distinct and powerful community. It was Benton's idea that it could be diverted to Saint Louis, and such might have been the fact had natural causes alone operated upon the country. When, in 1862, Congress came to inaugurate the great work of constructing the transcontinental road which Benton had advocated, and whose possibility he had made familiar to the public mind, it was evident that the circumstances of the country were not to be satisfied by the construction of a single line of railroad, except for the more difficult part of the route through the mountains.

This is shown not only by the provisions of the act of 1862 for a trunk with several branches, but more especially by the enormous subsidies which were given to each in aid of its construction. It was not one subsidy of a vast land grant and princely issue of bonds which was made. On the other hand, it was the grant of no less than four such subsidies in aid of as many different roads as far as the hundredth meridian. Two and one-half millions of bonds and as many acres of land would have been sufficient to secure the construction of a single road, had that been deemed sufficient, while, on the other hand, Congress made grants of not less than $10,000,000 of bonds and as many acres of the public domain, in order to secure four several roads. These subsidies were offered not in a spirit of reckless and heedless extravagance. They were swollen to their enormous proportions for the plain and simple reason that more roads than one were required and needed to be thus aided.

Thus we see upon the face of the first act of Congress, displayed in unmistakable characters, not only the great and transcendent purpose of building a transcontinental railway, but also the great purpose of building several lines connecting different sections of the country with a main trunk. It was by means of these different branches that the commerce of the Ohio Valley and the great regions drained by it, on the one hand, and of the more northern sections lying on the great lakes, on the other, were to be conducted to a point of convergence far west of the Missouri River and in the Territories; and there uniting flow on in a common current to our Pacific possessions. Chicago as a starting-point of one and St. Louis as a starting-point of another, were thus placed on a footing of perfect equality. There is more than one clause in the acts precisely and forcibly expressing this purpose. For instance, in the ninth section of the act of 1862, the Leavenworth, Pawnee and Western Railway Company was authorized to build its road from the Missouri, at the mouth of the Kansas, to the hundredth meridian, and here is the significant provision with regard to its eastern connection:

> The Leavenworth, Pawnee and Western Railroad Company of Kansas, are hereby authorized to construct a railroad and telegraph line from the Missouri River at the mouth of the Kansas River on the south side thereof, so as to connect with the Pacific Railroad, of Missouri, to the aforesaid point on the one hundredth meridian.

Thus it was required to connect at its initial point with the Pacific Railroad of Missouri, the same company which had been organized under the inspiration of Benton, and by which the traffic flowing by the Ohio and other routes to Saint Louis was to be conducted to the Kansas branch of the Union Pacific. There, I say, is unmistakable evidence that Saint Louis was regarded as one of the great points of departure of eastern commerce for the West. It was a recognition

of the original design and plan, modified to be sure by new circumstances. The vast subsidies of land and money, amounting to not less than $6,000,000 and ten millions of acres of land, which were made in aid of that branch, find their sole apology in the fact that the first great line of commerce across the country through the Ohio Valley, fed and enlarged by the vast regions related to it, were to be served and accommodated. Chicago was also the point of departure of several lines of road, partially built and designed to reach the Missouri River within the limits of the great State of Iowa.

Their point of convergence on the river being yet unknown, it was impossible to designate the precise point at which they should connect with the Union Pacific. But the act provides that a branch shall be built, called in several places the Iowa branch, from a point on the river convenient for the connection of the Chicago roads. As I have said these provisions are significant; they clearly show the purpose on the part of Congress to provide with absolute equality for the service and convenience and prosperity of these two separate, distinct, remote sections of our common country. And this is made doubly clear by the provision in the act of 1862, repeated in the acts of 1864 with additional words of emphasis, that these roads should with the main trunk each form one continuous line of road to be operated without distinction, difference, or discrimination between them.

It was, so far as the interests of Saint Louis were concerned, as if a single railroad were to be built from that city through the great State of Missouri to the river, thence through Kansas to the hundredth meridian, and thence through the Territories of Nebraska, Wyoming, Utah, and Nevada to and through California. So far as Saint Louis was concerned the several roads in system were to be operated as if she were the initial point of the only line of railroad across the continent: and as far as Chicago was concerned the scheme was as if the roads running west from that city and connecting with the Union Pacific Railroad at Omaha, formed another line of commerce with the Iowa branch and the main trunk from the one hundredth meridian and running thence west through the Territories to and through California, formed one connected, continuous line, and as the only one across the continent.

Such was the magnificent scheme devised, planned, and set forth in the original acts. It was with astonishing wisdom precisely adapted to the circumstances of the country. On the statute-books of the United States cannot be found a piece of legislation conceived in a spirit of broader statesmanship, developed in details more exactly fitted to accomplish the great ends in view. The spirit of the immortal Benton would have been stirred with a new enthusiasm could his patriotic eye have witnessed the enactment of the first great statute; his voice would have rung through the country with even a more inspiring and exalted patriotism could he have survived to pronounce encomiums upon this legislation. The ardor of his love of the city which delighted to honor him and which he more than honored would not have been dampened by any jealous reflection that it was to share with its great rival the advantages of being an initial point of the national work. He would have exclaimed, with the inspiration of an unselfish patriotism, that in this our great common country not one city but two were sufficient to be the initial points of the new enterprise.

Sixteen years have passed away since the original act was passed by Congress. Nearly ten years have passed away since these roads were built. They have been operated under the authority conferred

upon them by the acts. They have to a certain degree been accomplishing the purposes of Congress in lavishing upon them unexampled subsidies of land and money. But what do we now behold? What have we seen ever since they were put in operation? Have we seen them operated in harmony? Have they been connected and continuous lines? Has Saint Louis reaped the advantages of a road running through the States and Territories to the Pacific Ocean? Has the city in which the great idea was first conceived, in which it was developed and had its earnest and eloquent advocacy, been in fact an initial point of such a road?

Had the great Benton survived to our day would he have seen his idea realized, his plans accomplished, his labors rewarded, the city of his home and love standing in a renewed and expanded vigor and growth at the threshold of the transcontinental commerce? It is not so. By circumstances which it is not necessary to explain the original scheme has been defeated, the Kansas branch has been cut off from the trunk; it has had no relation whatever with the transcontinental commerce. Saint Louis has been excluded from the system. The Ohio Valley must reach with its trade and traffic our Pacific possessions not by a direct natural and continuous course but by a wide diversion to the north into the line of rival and alien course of trade.

The original purpose has been defeated in the fact that one section of the country has been shorn of its legitimate rights and privileges and advantages in order that another may be fostered and pampered by a monopoly which is not its due. Missouri and the States lying east of her and southeast of her find no part, share in no measure in the advantages which Congress intended to purchase by its subsidies of $6,000,000 and ten millions of acres of land. Witness here a nullification of the laws of Congress more arrogant than that upon which Jackson laid his iron hand. Witness here a perversion and defeat of the national will only less violent than that which has lately drenched our country in blood.

Shall this wrong be righted? Shall the different sections be restored to that equality which Congress originally intended to secure? Shall we of Saint Louis and Missouri, of the Ohio Valley, Southern Indiana, Illinois, and Ohio, Maryland, Kentucky, Tennessee, and the neighboring States have share and lot with our northern neighbors in the great line of national and international trade and commerce? The bill under consideration has been framed with a wide forbearance toward all to secure the rights of all. It has been framed to supply the defects in the old law and only to accomplish its original purposes; it is just; it is needed; it is wise; it is fair; it takes from no one his due; it gives to no one more than his due. Nothing else will meet the demands of the situation.

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JUNE 13, 1878.

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On the bill (H. R. No. 4399) to establish a Pacific Railroad commission.

Mr. CRITTENDEN. Mr. Speaker, the time has arrived when Congress must settle the several important railroad and commercial issues now commanding public attention. One of them already, after having received a most exhaustive discussion in the Senate, has be-

come the law, and under its operation will compel the Union Pacific and the Central Pacific Railroads to refund to the Government in the process of time $122,000,000, to which, if interest is added to interest, which the Government has and will be compelled to pay, will swell the sum to $174,794,925.

The second important issue is the consideration of the bill No. 3547, to regulate interstate commerce and to prohibit unjust discriminations by common carriers, which bill is now before this House, under the management of Hon. JOHN H. REAGAN, chairman of the Committee on Commerce. This, sir, is a bill of vast importance to our country, affecting alike the producer as well as the shipper, the demands of the appetite as well as the important legal and constitutional questions involved in its determination. There is no branch of business, however small, however great, that it does not touch in some way, at some point. It reaches its hand over the seventy-five thousand miles of railroads in this country and declares to them that no exacting and unjust discriminations shall be made between shippers, in charging different rates of freight to different persons for similar service or for charging more for freights for a shorter than for a longer distance on the same line of roads, whether in or outside the jurisdiction of one or more States or Territories.

The external trade of this country for the last year in exports and imports exceeds $1,000,000,000, the component parts of which received life, form, and utility under almost every flag of every civilized nationality of the world. As large as that sum is it shrinks and sinks into a corner compared to the internal commercial trade of this country. Over the seventy-five thousand miles of railroads in our land there was transported in 1876 $18,000,000,000 of internal or interstate commerce, a sum appalling in magnitude and gratifying in dimensions. With the increase of population and production in this country there will be a corresponding increase of this internal commerce and a corresponding greater necessity for some action of Congress in regulating the transit of such commerce.

The invitation and inducement to the various systems of combinations and "poolings" of earnings between the common carriers are too great to be resisted. And from such the commerce of our land is often unjustly taxed, delayed, controlled. And those evils must sooner or later be remedied by a power greater than the corporations. This regulation should be in the spirit of fairness, based upon principles of equity, unmoved by the prejudices and passions of the hour. Governments cannot afford to deal unjustly with its citizens, with the property and machinery, however strong the citizen, however potent the machinery.

The third important question evolved out of the railroad system is the one now before this House commonly known as the prorate bill, a measure introduced originally by me in this Congress to secure in some satisfactory way the regulation of the rates of fare and freight on the system or family of railroads chartered and incorporated under the acts of Congress of July 1, 1862, and July 2, 1864, and subsequent amendatory acts thereof, which were subsidized by the Government in land and money to the extent of $100,000,000 in order to "secure" in turn great objects and protect certain great interests even then foreshadowed to Congress, while this country from one end to the other was engaged in the most bloody internecine struggle that ever shook a continent. What were those objects? what were those interests? I will read from the opinion of the Supreme Court of the United States in what is known as the "interest or half-transporta-

tion" case to ascertain an answer to the question. Judge DAVIS, then on the bench, said:

In construing an act of Congress we are not at liberty to recur to the views of individual members in debate, nor to consider the motives which influenced them to vote for or against its passage. The act itself speaks the will of Congress, and this is to be ascertained from the language used. But courts may with propriety, in construing a statute, recur to the history of the times when it was passed, and this is frequently necessary in order to ascertain the reason as well as the meaning of particular provisions in it. (Aldridge *vs.* Williams, 3 Howard, 24; Preston *vs.* Browder, 1 Wheaton, 120.)

Many of the provisions in the original act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and cannot be properly construed without reference to the circumstances which surrounded Congress when the act was passed. The war of the rebellion was in progress and the country had become alarmed for the safety of the Pacific States, owing to complications with England. In case these complications resulted in an open rupture the loss of our Pacific possessions was feared; but, even if this fear were groundless, it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every government owes its citizens. It is true the threatened danger was happily averted, but wisdom pointed out the necessity of making suitable provision for the future. This could be done in no better way than by the construction of a railroad across the continent. Such a road would bind together the widely separated parts of our common country and furnish a cheap and expeditious mode for the transportation of troops and supplies. And if it did nothing more than afford the required protection to the Pacific States, it was felt that the Government in the execution of a plain duty could not justly withhold the aid necessary to build it.

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This enterprise was viewed as a national undertaking for national purposes, and the public mind was directed to the end to be accomplished rather than the particular means employed for the purpose. Although this road was a military necessity, there were other reasons active at the time in producing an opinion for its completion besides the protection of an exposed frontier. There was a vast unpeopled territory lying between the Missouri and Sacramento Rivers, which was practically worthless without the facilities afforded by a railroad for the transportation of person and property. With its construction, the agricultural and mineral resources of this territory could be developed, settlements made where settlements were possible, and thereby the wealth and the power of the United States essentially increased. And there was also the pressing want, in times of peace even, of an improved and cheaper method for the transportation of the mails and supplies for the Army and the Indians.

The prize was an empire, the object an unbroken unity of continuous territory under the management and ownership of our Government, and the enterprise the construction of the most magnificent system of railroads that ever entered the conception of man or ever bound a country together under one form, one flag, one rule. The great transcontinental roads were constructed from Omaha to San Francisco; the various branches were constructed from Kansas City, Saint Joseph, and other places to their several points of intersection with the trunk line; Territories have been organized into States, and unsurveyed wild land organized into Territories since the completion of the lines of railroad; and in the presence of these changes, at this day, in this House it is gravely denied that it was in the contemplation of Congress at the time the charters were granted to make and establish these various lines of roads into one system, one family of roads. The issue is made and it must be met, else the greed of individuals and the encroachments of power will set at defiance and nullify the wisdom of that legislation.

In order to fully understand that legislation, its cause and history, we must recur to the reason that prompted and demanded it. I have already quoted the opinion of the Supreme Court of the United States which states in clear, bold language some of the causes of such legislation. But there is one other of vast importance, the outgrowth of our restless, aggressive American character, which saw two great

lines of immigration and commerce, pointing from the East to the West, from the Atlantic to the Pacific, and those lines must meet at some initial point in one of the Territories and west of the Missouri River, and Congress determined not to subsidize a single line thence westward to the eastern boundary of the State of California; but it saw fit to establish a system having a trunk and several branches. Why was that? Why was it that Congress was willing to give to the Kansas branch of this system $6,000,000; to the extension of the Hannibal and Saint Joseph, $1,600,000; to the Iowa branch, as it is called, from Omaha to the one hundredth meridian, over $2,500,008; and to the Sioux City branch, $1,600,000? Why these immense duplicates of grants rather than one grant? The reason is perfectly apparent by a reference to the circumstances of the country.

If Congress had been governed and limited at the time of the passage of the acts of incorporation by the same narrow spirit by which interested persons now seek to interpret those acts, to have built and subsidized but one line of railroad between the Missouri River and California, to that line and that line alone there would have been but one grant of bonds and lands, saving to the people millions in bonds, money, and lands given to the other roads. Instead of authorizing and aiding but one road from the Missouri River to the one hundredth meridian, that one being the Iowa branch, as called, extending from Omaha to said one hundredth meridian, several were authorized and aided. Two and a half million dollars in bonds and two million acres of land would have sufficed for that one road. But the same Congress that authorized and aided that Iowa branch (as that part of what is now called the Union Pacific was then known) granted to the several roads or branches over $10,000,000 and twelve million acres with which to construct and build said several branch roads to some initial point of intersection with the trunk line.

One line of road could not answer the demands of trade, could not extend the necessary facilities to the two great currents of trade from the East to the West which moved in one stream until they reached Pittsburgh, and there separated into almost parallel lines, one by the law of adjustment seeking the southern line by Columbus, Cincinnati, Indianapolis, Saint Louis, and Kansas City, and the other by a similar law passing over the northern line by the lakes, Toledo, Chicago, through Iowa, on to Omaha—two routes that it was impossible to unite after separation at a common point, east of the one hundredth meridian, or Cheyenne beyond. A brief reference to the circumstances of the country at the time will show why it could not be done. As before stated, the line of the Missouri River between Kansas City and Omaha may be taken as the line from which the road or roads should be built, as the law permitted no departure from that stream as the initial point.

Those two great lines or currents of trade, sweeping on in restless energy from the East to the undeveloped West and to California, could not converge at any other point than that already designated, and to my mind it exhibited far-seeing statesmanship to so legislate at that time when the country was in the throes of war as not only fully to comprehend but also to control and meet the requirements of those lines of commerce. Those wise legislators had the shadows of coming events then inspiring them with ideas of what the West was to be within a score of years, and they constructed the most simple and harmonious system of railroads, as far as legislation was concerned, that ever entered the conception of men, to be separate and distinct in autonomy and operation up to a certain point as are our

own families, but at and from that point be one, operated as one continuous line, without any discrimination whatever, not to be done for the profit of the managers and owners of the roads, but for the comfort and convenience of travel and commerce.

From the very earliest period, even before the adoption of the Constitution, that unsettled spirit of emigration which has ever impelled the populations of the East to western homes had crossed the Alleghanies and planted a line of settlement and opened a current of trade down and through the Ohio Valley, and that narrow line has been widening day by day into great communities and sovereign States, and that tiny current has expanded and deepened into a mighty tide of national commerce and travel. The Ohio Valley, containing the great cities of Saint Louis, Louisville, Cincinnati, and Baltimore, draining the great States which debouch upon it, is a clear, certain, distinct, individual way of transcontinental commerce, as well defined by natural laws as now by physical means of transit, and demanded a convenient outlet to all parts of the West in the speediest and cheapest way.

So, too, at an early, and yet at a later day, the same bouyant, restless spirit, had led the steps of adventurous men along the shores of the lakes far into the wide, wild, beauteous regions of the northern prairies, and a line of settlement, of homesteads, and a course of trade had there been opened, along which, as they have expanded and deepened, Cleveland, Toledo, Chicago, as before stated, have sprung up in wonderful vigor, and other great communities and sovereign States have filled up the whole imperial domain; and so here, too, is another and a clear, distinct, certain, individual way of transcontinental commerce, as boldy defined by the same natural laws as the other course or line.

In 1862 these two lines of commerce had penetrated so far into the West that they could not be brought together at any point on the Missouri River. The southern line had become so defined that a railroad had been built to Sedalia, in Missouri, and was in process of rapid construction to the mouth of the Kansas River. The northern line was being extended by roads through Iowa on to the Missouri River. At the same time that the two lines of natural commerce could not be united on the Missouri in such a way at such a point as to meet the requirements of those opposing lines of commerce, yet at the converging point, that of consolidation, meeting at the one-hundredth meridian, the first point of impingement since the separation or division at Pittsburgh, one road through the vast, trackless regions of the plains and mountains was sufficient to answer the necessities of those combined currents of trade and travel, and the contrivance of a main trunk line from a common, convenient point, with the several branches reaching to the distinct and separate sections of the country was not only a necessity, but was the conception of practicable wisdom. Shall that wisdom be now made folly and worse than folly by the craft and avarice of men who hate law and only study self-interest?

The very circumstance of these two separate lines of travel and courses of trade and distinct interests required, in order to the attaining of the great public purposes of the act, the establishment of branches. Over one of these lines as well as over the other the great mails and Government supplies were to be transported to the trunk line. In the different sections of the country to which these lines were serviceable detachments of the Army were distributed, and from them they were as the exigencies required to be moved to the fields of Indian

warfare. So that in the branches equally with the trunk the Government as well as the people had the most direct interest.

To one having regard only to the most obvious requirements of the circumstances already noted it might appear sufficient to provide these several branches as separate works. But a wise sagacity enlightened the action of the men who framed this act. They provided the necessary branches, but they did more—they united the branches and the trunk together into a compact, harmonious system.

First. The act provides in section 12 that the trunk and branches shall be built with a uniform gauge, so that cars can pass from one road to the other.

Second. It provides in each of the several sections relating to the branches that the tracks all meet and unite one with another. Thus mechanical connection of the several lines is provided and thus opportunity for a unified operation is made.

Third. But that object might have been defeated if the act had stopped there and if any one company failed to build its road. That contingency is carefully provided against by the provision in section 10 that if one company delays to build its road another company may succeed to its rights and build it. And then this privilege conferred in section 10 is made a duty in section 17, which provides that, if all the roads, the trunk and each branch, be not built within a prescribed time, all the property of all the companies shall be forfeited to the United States. Thus the construction of the whole system of roads is most carefully assured.

Fourth. But thus far we have nothing but the construction of the several roads in such wise that they may be operated in unity. We now find the rule of operation prescribed: in the act of 1862 it is that all the roads shall be operated as one connected, continuous line; not the trunk, not the trunk and one branch, but the trunk and all the branches, one with another and all together. And in the act of 1864 this is repeated with an inhibition of discrimination between them. This completes the system, its construction and its operation.

Fifth. But there are other circumstances which give emphasis to this view: The first eight sections of the act deal with the main trunk, which is to begin on the one hundredth meridian and run thence west. In the ninth section the branch through Kansas comes to be dealt with; but in reference to it the clauses of the preceding sections are not repeated. For instance, a grant of land is not made to it, as it is to the trunk in section 3, nor is a grant of bonds made to it, as it is to the trunk in section 5. All that is said is that the branch shall be built on the "same terms and conditions" as the trunk; and it was under those few simple words of reference merely that the Kansas Pacific Company received six million acres of land, $6,000,000 of bonds, and all its great franchises and privileges and properties; and just the same is true of each of the other branches.

It thus appears that each one of these roads is placed on a footing of exact equality with every other of them. It takes the same aid, powers, rights, property; it assumes the same duties and is subject to the same liabilities.

Sixth. The significance of this becomes the more apparent upon a consideration of other clauses. In section 9 the Kansas branch is required to connect at the river with the Pacific of Missouri, which runs from Kansas City to Saint Louis, and with a road then known as the North Missouri, which was in the process of construction, from Saint Louis to Kansas City. Thus that branch was made the conduit through which the commerce of the Ohio Valley flowed to the trunk.

Each of the other branches, in its turn, is in like manner made to connect with a railroad or a system of railroads in the East. The object evidently was to put each section of country on a footing of the most absolute equality in respect of the business to be done with the Pacific coast over the main trunk. The South was to have no advantage of the North and the North was to have no advantage of the South.

This survey of the act displays to view a contrivance which was very complex in its construction and yet was most admirably fitted to subserve the great public purposes of the legislation. We have now shown that Congress in this legislation sought the accomplishment of certain great public purposes; we have shown what they were; we have shown that they were attainable by means not of one line of railroad only, but by means of a system of several railroads; we have shown that such a system was devised with a wise regard for the conditions existing at the time, and that in the rule of its opererration, and the purposes for which it was framed, it placed the different sections of the country on an equality in all respects. We now approach the important question whether these great public objects have been attained; whether this contrivance has fully met the exigencies for which it was created; whether, by the jugglery and daring of unscrupulous men, all the branches, excepting that from Omaha to the one hundredth meridian, have not been excluded from the benefits and purposes for which created, and whether by the force of obstinate and avaricious men the current of transcontinental trade, passing from Baltimore, Cincinnati, Indianapolis, Saint Louis, and Kansas City, has not been checked, retarded, and in fact thrown out of its natural channel into a different and ungeographical one, for the double purpose, first, of the destruction of the branches, secondly, of forcing that trade over lines wholly owned by those men, with the obvious intent of gain and monopoly. This is a grave charge and one that should not be lightly and causelessly made. I should not make it unless prompted by a sense of duty and supported by the most incontrovertible proof.

In making these charges I am actuated by an elevated regard for the law as made, as found, as construed, and by a sense of justice toward the great States of Colorado, Kansas, and Missouri, whose money and lands aided in the construction of the Union and Central Pacific, and whose people and commerce have been made to suffer to a crushing extent by the exactions and tollage of those roads. Have the Union and Central Pacific Railroads so acted toward the Kansas Pacific and other branch roads as to be toward and with them "as one continuous line" as required by the fifteenth section of the act of 1862 and have they so acted toward them as "to afford and secure to each equal advantages and facilities as to rates, time, and transportation without any discrimination of any kind" as is required by the same law. What does one connected continuous line mean? This is answered by the Supreme Court of the United States in the Omaha Bridge case, decided by Justice Strong in 1875.

That was a proceeding by mandamus to compel the Union Pacific Railroad Company to operate its road as a continuous line, by running its regular through trains to and from the Iowa shore of the Missouri River at a point within the corporate limits of Council Bluffs, in the State of Iowa, and which point the relator claims to be the eastern terminus of the road. The railroad company claimed that the eastern terminus, legal as well as actual, is on the western shore of that river, within the corporate limits of Omaha, Nebraska. Omaha and Council Bluffs were facing each other on opposite sides of the Mis-

souri River, and between those points the railroad company had constructed a railway bridge, at which the company made transfers of passengers on "transfer trains," charging therefor extra and special rates, contrary to the law, as declared by the court in the following language:

Holding then, as we do, that the legal terminus of the railroad is fixed by law on the Iowa shore of the river, and that the bridge is a part of the railroad, there can be no doubt that the company is under obligation to operate and run the whole road, including the bridge, as one connected and continuous line. This is a duty expressly imposed by the acts of 1862 and 1864, and recognized by that of 1871. What this means it is not difficult to understand. It is a requisition made for the convenience of the public. An arrangement such as the company has made by which freight and passengers destined for or beyond the eastern terminus are stopped two or three miles from it and transferred to another train and again transferred at the terminus, or by which freight and passengers going west from the eastern end of the line must be transferred at Omaha, breaks the road into two lines and plainly is inconsistent with continuous operation of it as a whole. If not the injunction of the statute has no meaning.

The court says:

The court says in so many words that they cannot break bulk; that they cannot divide up their line; that they cannot operate the bridge any differently from any other part of their whole line; that they cannot charge, under the acts of 1862 and 1864, anything more than the same rate per mile over the bridge than for anywhere else.

Does not the Union Pacific require the freight bulk to be broken; the line to be divided; the passengers to be transferred from one line or class of cars to another line or class at Cheyenne when going east or west over that road, or going from that road on to and over the Kansas Pacific or other branches? Is not that, then, an interruption of the "continuous line" required by law? A wayfaring man, though a fool, would so declare it, as well as the courts of the land.

The next question is: does the Union Pacific discriminate in any way against the Kansas Pacific or other branches? In order to properly understand the issue, let me state that the Kansas Pacific taps or intersects the Union Pacific at Cheyenne, at the half-way point between Omaha and Ogden, the present terminus of the Union Pacific, and that according to all equitable rules and schedules, but one-half as much should be charged on freight and passengers by the Union Pacific from Cheyenne to either Omaha or Ogden as from Omaha to Ogden, or from Ogden to Omaha over the Union Pacific alone. In illustration of the point, I quote from an article taken from the Saint Louis Republican:

UNION PACIFIC DISCRIMINATIONS.

A few examples of the discrimination made by the Union Pacific Railroad against travel and traffic which comes into it or departs from it from points below the latitude on which it runs will exhibit the injustice more clearly than any amount of assertion. The act of Congress provides that the Pacific Railroad and its branches, one of which is the Kansas Pacific, shall be operated "as one connected, continuous line," so as to "secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of either of said companies, or adverse to the road or business of either or any of the others." This is unambiguous and explicit, and yet it is violated every day by the Union Pacific Company. No article of commerce raised or manufactured in Colorado can be transported west of Cheyenne without paying more for the freight, even for fifty-seven miles, that is charged from Omaha to Ogden, a distance of one thousand and thirty-two miles. The tariff on bacon, per car-load, from Cheyenne to Ogden, five hundred and sixteen miles, exceeds the tariff from Omaha to Ogden, one thousand and thirty-two miles, $45; on beans, $85; on mess-beef, $81; on coal-oil, $81; on grain, $88; on hides, $213; on lard, $71.50; on lumber, $70; on powder, $108; on sugar, $81. It costs these higher rates to ship a car-load over one-half the Union Pacific road than it does to ship it over the whole road—the reason being that the road wants to force all traffic south of it to go to Omaha and pass over its whole length. Senator CHAFFEE, of Colorado, in his able speech on the subject, made in the Senate on the 13th ultimo, said: "Neither Kansas, Colorado,

nor Missouri can ship bacon, mess-beef, grain, live-stock, &c., via Cheyenne, to any of the Western States or Territories, and all are entirely shut out from the markets of Utah, Montana, Nevada, and other regions." The road charges for passenger fares, first-class, from Omaha to Ogden, one thousand and thirty-two miles, $54, and for emigrant, $21.60; and from Cheyenne to Ogden, five hundred and sixteen miles, just one-half the distance, for first-class, $46.50, and emigrant $46.50—so that no passenger can go west to California or east from California via the Kansas Pacific Road without paying an overcharge of $17.50 on first-class tickets. The price of emigrant tickets from New York to San Francisco via Omaha is $60, of which $21.60 is charged from Omaha to Ogden; the price of these tickets from Cheyenne to Ogden is $46.50, which is $24.90 more than the Union Pacific charges for the whole distance from Omaha to Ogden

I give another striking instance from Laramie, in Wyoming Territory, in a published letter in the Laramie Daily Sentinel of April 22, 1878:

*A card.*

Notwithstanding the report that the Union Pacific Railroad Company are transporting merchandise to this place free of charge to one of our merchants for the avowed purpose of ruining the undersigned—to punish him, I suppose, for refusing to pay this same company $110 per car on flour from Cheyenne here, a distance of fifty-six miles, it being the same rate as is charged from Omaha to Laramie, a distance of five hundred and seventy-two miles—and, further, because this same company would not make concessions on charges from Omaha here, to enable me to sell goods as cheaply as they could be obtained in Cheyenne and other neighboring towns and transported here—for this reason, I say, R. P. Vining, the general freight agent of this same company, did threaten to ruin the undersigned by transporting goods from Omaha to Laramie free for other parties.

I wish the public to gain all the benefit possible from the low prices that will rule here for the next week or two, and at the same time I assure them that, no matter what the consequences are to me, I do not propose to be undersold, and therefore invite your patronage. As to the right of the railroad company to discriminate against any of its patrons I have nothing to say, but will wait until the matter can be fully presented in a court of law.

C. S. DUNBAR.

Is that not discrimination of the lowest and most lawless kind?

This system of discrimination does not end with individuals, but, with a bold defiance of the law and utter disregard of its provisions, it has charged even the Government for the transportation of its "troops and munitions of war excessive and extortionate rates" in the most wanton and lawless way, in violation of every rule of honesty and fair dealing. I give one single instance. During the last summer a regiment of soldiers was sent from Saint Louis to re-enforce General Howard, then operating against the Nez Percé Indians on the Pacific coast. The troops were transported over the Saint Louis, Kansas City and Northern, Kansas Pacific, and Denver Pacific to Cheyenne, thence by the Union and Central Pacific roads to San Francisco, the rate charged being $111 each, which was divided among the five roads as follows:

| Roads. | Miles. | Amount. | Per mile. |
|---|---|---|---|
| | | | *Cents.* |
| Saint Louis, Kansas City and Northern | 273 | $7 50 | 2.74 |
| Kansas Pacific | 639 | 7 30 | 1.14 |
| Denver Pacific | 106 | 3 50 | 3.30 |
| Union Pacific | 516 | 46 50 | 9.00 |
| Central Pacific | 883 | 46 00 | 5.21 |

Now the ordinary rate on passengers from Saint Louis to San Francisco, via Omaha, is $116, divided as follows:

| Roads. | Miles. | Amount. | Per mile. |
|---|---|---|---|
| | | | *Cents.* |
| Saint Louis to Council Bluffs | 438 | $15 50 | 3.54 |
| Omaha Bridge | ..... | 50 | ..... |
| Union Pacific | 1,033 | 54 00 | 5.23 |
| Central Pacific | 883 | 46 00 | 5.21 |

Hence it will be noticed that the Union Pacific demands nine cents per mile on business via Cheyenne coming from the Kansas Pacific, while on business via Omaha coming from all other roads it charges but five and twenty-two one-hundredth cents per mile. The fact that this discrimination is made on the Government business as well as that of private individuals will show that it is of national importance that the monopoly should be broken. If the troops had been carried from Cheyenne to Ogden at the same rate per mile as is ordinarily charged from Omaha to Ogden, namely, five and twenty-two one-hundredth cents, it would have cost the Government but $91.44 for the transportation of each soldier to San Francisco, instead of $111.

Is this not enough to prove the spirit of this corporation, to prove that in times of distress to the Government it is ready to take advantage of the situation and impose extraordinary burdens upon it? There is a double criminality in the act. First, in the road that commits it; second, in the officials of the Government who quietly submit to it.

It is strange that the Government should thus submit to be a victim of a violation of its own laws by a road built through its donations, but the facts are undeniable, and they show that this powerful monopoly defies even the power that created it.

The history of the Union and Central Pacific roads has been one prolonged series of oppressions, discriminations, and dictations since their operation under the present management, and those managers have attempted (in many instances succeeded) to dictate terms to States, Territories, courts, and the Government through corrupt officials and a subsidized press. The Union Pacific is now and has been for years operated under the control of Jay Gould, and C. P. Huntington is at the head of the Central Pacific—two cherries on one stem, birds of the same nest, of the same feather, with the nature of the hawk, without its love of the day. Both place themselves in the management of their roads above and in defiance of the law, and it is sought by the commissioners bill to place them and their roads under the law and subject to its demands. Let the contest be sharp and decisive, thereby teaching those gentlemen a salutary lesson.

Before proceeding to the characterization of the leading spirit of the Union Pacific road, I will, in the language of Hon. W. W. RICE, of Massachusetts, epitomize the bill reported by the committee:

EXPLANATION OF THE BILL.

The first section of the bill appoints three citizens, of national reputation, and their successors, to be a board of commissioners, to hold their office for three years; their successors are to be appointed by the President of the United States, with the advice and consent of the Senate, and any vacancy in their number is to be filled in like manner. One must be skilled in law and the other in railroad management.

Section 2 provides that the board of commissioners shall have general supervis-

ion of the roads named in it, and such others as shall receive congressional aid. The board is to have an official seal and clerk. No one of them shall be in the employ of any of the companies or have any connection whatever with them.

Section 3 imposes upon them the duty of informing themselves of the condition of the roads and the manner of operating them, and particularly whether they furnish to the public and the Government proper accommodations, at reasonable rates, and accomplish the purposes for which they were established.

Section 4 provides that they shall establish rules and regulations to govern the operation and management of the roads so as to afford and secure to the public and the Government all the advantages of intercommunication, travel, and transportation stipulated for in the acts, and to secure and enforce the reciprocal rights and duties of the companies. These rules and regulations are to be operative until revised, altered, or annulled by the commissioners or the courts.

Section 5 provides that, in case of dispute between the companies as to their mutual rights and duties or any company or individual shall have cause of complaint against either of them, the commissioners may hear and determine the matter.

Section 6 provides that when it appears to the commissioners that one of the companies is failing to accomplish the purposes of its creation they shall make rules, regulations, directions, and orders in respect of the matter in which it is delinquent, not inconsistent with the provisions of the acts, nor so as to impair the ability of the company to meet the payments due by it to the Government.

Section 7 provides that upon the refusal of any one of the companies to comply with any rule or order of the commissioners, any party aggrieved thereby, or the commissioners, may exhibit his bill in the United States circuit court to compel obedience, and provision is made for bringing the cause to a speedy determination.

Section 8 requires the companies to furnish the commissioners with any information which they may need.

Section 9 provides for annual reports to be made to Congress.

Section 10 fixes the salaries of the commissioners and clerk and provides for the payment thereof and the incidental expenses of the commission, payment of which is to be made from a fund raised by assessments of the companies, to be made for the purpose.

Section 11 preserves unimpaired the duties and obligations now imposed by law upon the companies.

This system of roads was and is "a national enterprise," in the language of Judge DAVIS, "created for national purposes," and should at no time be permitted to escape by the legerdemain of man from the purposes of its creation and the nature of the enterprise. Having been so conceived and constructed by the Government for the great end of developing "the agricultural and mineral resources of the Territory making settlements, where settlements were possible, * * * and for providing a cheaper and improved method for the transportation of the mails and supplies for the Army and Indians," the question arises, can Congress so legislate now in regard to these roads as to make them the handmaids and not the oppressors of our travel and commence? Heretofore I have given the opposing views of the roads and the committee, and I now present some authorities from the very able and exhaustive speech of Hon. W. W. RICE, of Massachusetts, made in this House on the 8th instant, in charge of this commissioners bill:

This bill vests in a board of commissioners the powers to make regulations to govern the operation and management of the roads mentioned in the second section. The question of the constitutional competency of Congress to vest such power in a subordinate tribunal may be raised. But it may be justified by the long and continued course of legislation in respect to other departments and administrative officers of the Government. For instance, in 1820 the Secretary of the Treasury was directed to make and issue, from time to time, such instructions and regulations to the several collectors, receivers, depositaries, and other officers receiving the public funds as he should deem best calculated to promote the public interests. And in 1864 he was required to prescribe rules and regulations to be used under and in execution and enforcement of the various provisions of the internal-revenue laws. In 1828 he was required to establish such regulations as the President should think proper in relation to the collection of customs. And by many other acts like power was vested in him in respect of other matters committed to his administration.

Under the authority thus conferred on the Secretary, voluminous and numerous rules and regulations have been prescribed by him for the conduct of the business

of his Department. The same is equally true of every one of the other great Departments of the Government. Descending from the Cabinet officers to their subordinates, we find similar powers conferred upon them. Thus, in 1866, the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, was authorized to frame appropriate regulations for enforcing and carrying into effect the laws relating to the public lands. And the Commissioner of Indian Affairs was, in 1834, authorized to prescribe regulations for carrying into effect the various provisions of law relating to the subjects committed to him. And in 1872 the Commissioner of Internal Revenue was, under the direction of the Secretary of the Treasury, required to prescribe regulations for the returns to be made by individuals for the purposes of taxation.

A very interesting instance, worthy of especial notice, is that of steamboat inspectors. The laws relating to them were of early origin and were digested in 1871. They provide for a supervising inspector-general and ten supervising inspectors, who should assemble as a board once a year in this city, and establish all necessary regulations required to carry out, in the most effective manner, the provisions of the act. And it was specially provided that these regulations, when approved by the Secretary of the Treasury, should have the force of law.

The act further provided for local inspectors. Under the authority thus conferred, rules and regulations have been prescribed for the inspection and license of vessels not only navigating the high seas, but also the great rivers and inland lakes. The characteristics of our inland waters differ in many respects, so that rules proper for regulating the navigation of one are inapplicable to another, and separate sets have accordingly been necessary. Each has been made with great care and minuteness by the board, and as its members are men of experience in the navigation of different rivers, lakes, and seas, they have been able to frame their rules and regulations with great aptness. The board, also, by its rules, provides for the examination of captains, pilots, and engineers, and any one guilty of a violation of any one of these rules may be summoned before an inspector, put upon his trial, and if found guilty punished by a forfeiture of his license.

Other similar boards have from time to time been created with the same power to prescribe rules and regulations in respect to the matters committed to their administration. The power conferred by this bill upon the board of railroad commissioners to prescribe rules and regulations for the government of the roads mentioned in the second section is not of broader or different character.

I am not aware that the power of Congress to vest such authority in subordinate tribunals and administrative officers has ever been questioned or made the subject of discussion. This feature of the bill is sufficiently vindicated by the long and uniform course of similar legislation which I have very briefly referred to.

Passing now from the question of the power of Congress to vest in the board proposed to be created authority to prescribe rules and regulations, which may be called its legislative functions, I come to the consideration of the provision vesting in it jurisdiction to inquire into and determine differences between the companies, which may be called its judicial function. It is to be observed, in this connection, that the decision which the board may make upon any matters of dispute is not final. The company decided against may take upon itself the responsibility of refusing to obey the decision, and the burden is then cast upon the party aggrieved thereby, or the commission, of applying to the courts for the proper judicial process to compel obedience. The judicial power is confined to the simple matter of preliminary inquiry. A much larger power of judicial determination has from time to time been vested in special tribunals. An instance is that of the inquiry, trial, and determination by steamboat inspectors for offenses against their rules and regulations for the navigation of steam-vessels; their decisions are final, and may be followed by the severe punishment of excluding the offender from the prosecution of his legitimate business.

Another instance worthy of special notice is that of registers and receivers of the land-offices. Persons entitled to make pre-emption of the public lands must possess certain qualifications and perform certain prescribed acts. In the act of September 4, 1841, which confers the right of pre-emption, it is provided that all questions as to the right arising between different settlers upon the same tract shall be determined by the register and receiver of the district within which the land is situated.

In 1858 it was provided that appeals should lie from their decisions to the Commissioner of the General Land Office, and his decision was made final unless a further appeal were taken to the Secretary of the Interior. These provisions of the statutes were simply re-enactments of similar provisions in former acts and of the general course of procedure in the land department. The question early arose, what was the force and effect of decisions of the register and receiver or of their superior officers upon appeal?

Wilcox *vs.* Jackson (13 Peters, 498) is the leading case on this subject. It was there held that the registers and receivers were a special tribunal, and that their decisions upon matters within their jurisdiction were final and conclusive, but upon

matters without their jurisdiction their decisions were void; that is to say, the same rule which is familiar to all lawyers in respect of the conclusive effect of the judgments of courts of limited jurisdiction applies to the decisions of the land officers. The question has been agitated in different forms in many cases since. The recent case of Johnson *vs.* Towsley (13 Wallace, 72) was elaborately argued by counsel and maturely considered by the court. Every objection which could be taken against regarding the decision of the land officers as conclusive was urged, but neither in that case nor in others which have been before the court has it been claimed that it was not competent for Congress to confer upon the land officers the power of judicial inquiry and determination, and even to make their decisions final upon questions of fact when both parties had opportunity to be heard, and fraud did not intervene in the inquiry.

Another case may be mentioned, because it was also the subject of elaborate examination in the Supreme Court. As early as 1820 an act was passed providing that if a public officer charged with public funds should not duly render account therefor, the First Comptroller of the Treasury should state the account and certify it to the Solicitor of the Treasury. That officer was required to issue his warrant to the marshal of the district within which the delinquent lives, commanding him to make the moneys out of the goods and chattels, lands and tenements of the defaulter by levy and sale thereof. In Murry's Lessee *vs.* Hoboken Improvement Company, 18 Howard, 31, the question was raised whether it was competent for Congress to confer on the Comptroller and Solicitor power to issue such writ, on the ground that in doing so they necessarily exercised judicial functions. That subject was elaborately discussed by Mr. Justice Curtis, delivering the judgment of the court. He said:

"It is evident that the Comptroller must, in determining whether the warrant should issue, pass upon precisely the same questions which would be submitted to a court in an action brought by the Government against the officers."

It was admitted that this was an exercise of judicial power by an administrative officer, but it was also held entirely competent for Congress to vest such power in such officers. This case, and the other instances which I have cited, go far beyond the bill under consideration. They put the determination of the officer or tribunal upon the high ground of judicial judgments. The decisions and orders of the board proposed to be created by this bill are not definitive, and cannot even be enforced except by the aid of a judicial process, and that process, too, must be invoked not by the delinquent in order to protect himself, but by the party aggrieved by his disobedience or the commission. This bill is not, then, obnoxious to any objection on the ground that it confers upon the board of commissioners either legislative or judicial powers.

Would it not be an anomaly in our system of government, in our domestic affairs, if the power were not in some way reserved to be exercised in emergencies of controlling in the interest of mankind and in behalf of our own happiness the creations of public legislation, public necessities? Some one may say the Constitution gives no such power. That may be true in one sense of the word, but, as Mr. Adams says:

> At the time the frame work of our Government was put together, a system of necessary monopolies was the very last thing which was expected to present itself on this continent. Our Governments, State and national, grew up among and were calculated for a community in the less complex stages of civilization. Our whole machinery looked to dealing with individuals, and that only in the least degree which deserved the name of government at all. The idea of one man or set of men combining to own in absolute monopoly the great channels of internal communication as then existed, the Hudson, or the Ohio, or the great lakes, would have been regarded as a wholly inadmissible supposition, a contingency impossible to occur. Consequently no machinery was devised calculated to meet such an improbable emergency; yet that very emergency seems now to be imminent.

Shall we not then as prudent and considerate legislators prepare for such an emergency by the commissioners bill? It may not be all that is desired, all that the "emergency" demands, still it is a step in the right direction, and should be followed by others, else "the growing torpidity of public opinion" will not be aroused to the surrounding corporate dangers until it is too late.

The commissioners bill, or one of a similar character, can alone remedy the evils surrounding the management of those roads receiv-

ing Government support. They cannot be remedied in each individual instance as presented by legislation. Such would be the worst species of special legislation. There must be an "executor power" created specially calculated to meet the demand. It is the want of this which has brought to naught, says Mr. Adams, all efforts at general legislation on this subject up to this time. Congress should enact this general law for the requirment of this system of roads as it does to meet the innumerable civil and criminal complications which arise, but in the one case as in the other the judicial and discretionary action under the general law should be devolved upon a tribunal specially created to take cognizance of them. Congress can only declare a general rule or law which must apply to all alike, "but the degrees of discretion which varying circumstances exact in the application of the rule or law must constitute a trust necessarily delegated to others." Congress nor its committee can hear the innumerable complaints made by shippers and travelers against those roads, and a "power" must somewhere be established to give audience to them which must be freed from "the principle of special legislation kept open in the background behind them." That "power" should be executive and decisive, only to be reviewed in certain acts by the courts as contemplated in the bill before us.

The next general question is: can the courts of the land remedy the evil? Mr. RICE answers the question very ably, as follows:

THE REMEDY NOT TO BE FOUND IN THE COURTS.

The ordinary processes of the courts of justice furnish no adequate remedy. The judicial tribunals administer the law as it has been prescribed. Their discretion may be exercised only within narrow limits. It not unfrequently happens that judges find themselves constrained by technical rules of law to disregard the particular circumstances of the case and what may seem the very right of the matter. Dealing only with cases which have occurred in past experience and bound by precedent to a further application of what has been decided, they are not able to frame their judgments with such flexibility as is necessary adequately to deal with the variable character of the relations of railroad companies to one another and the public. It is of the very essence of judicial judgments and decrees of courts, as well of equity as of law, to conclude the controversy by a final determination. From such a judicial conclusion, railroad companies are able readily to escape by some slight change of circumstances.

Thus case after case may arise and be disposed of without reaching any decisive and comprehensive conclusion. And, besides all this, litigation in the courts may be so greatly protracted that an evil complained of may become securely intrenched before a remedy can be administered. The law of judicial procedure is full of dilatory and interlocutory applications, which not unfrequently defeat final judgment, and so delay progress to it that "the law's delay" has become proverbial. The evil is the greater in controversies of the sort to be dealt with by the proposed commission, because they involve not so much private as public interests. While the cause is pending in the courts the public and the Government must stand awaiting the judgment, their rights in abeyance, their interests sacrificed.

The proposed commission will be able to deal summarily with the questions and parties brought before it. The course of procedure being special must necessarily be simple. The members will be informed by the testimony of witnesses, the allegations of parties, and the arguments of counsel. The party aggrieved and the party complained of will each have his day in court. But the subject of inquiry will always be the very right of the matter, and to its determination the commissioners will bring an intelligent experience, and above all a personal observation. They will therefore be enabled to reach an early conclusion.

Having discussed every issue connected with this important subject I now proceed with the personalism of my argument. I do it with due regard for the time and place. The very air about this Capitol during the discussion of the funding bill in the Senate was made noisome by the presence of pimps and detectives of these moneyed powers pursuing Senators even to their private residences with impudent purposes and malicious designs. One great moving spirit has

been and is at the head of this "power." He is no ordinary man. Millions are playthings with him, contracts are baubles, and men are made toys. The very quietude of his life and presence make him the more powerful and the more dangerous. The silent gases and explosives are often only known after their results, but nevertheless are immense powers in their quietude, requiring only the occasion to exemplify their virtues for good or evil. As one said, seeing him in the Senate gallery listening to Senator EDMUNDS'S great sentences of facts, logic, and law:

> There sits the singular-looking Jay Gould as impassible as a statue. The only expression one ever sees on his face is a sneer, insignificant and yet striking—with jet-black hair, eyebrows, and beard, and a skin white as snow—there is something in his reticence and self possession which gives to spectators a sense of power. And there can be no doubt on that point; he is a man of immense resources, and if his moral nature were as well developed as his mental he would be a great man.

Jay Gould is no ordinary man, and is felt in some way by somebody wherever he goes, whatever he does. Behind all his great and stealthy movements there is a purpose well conceived and well digested, ever maturing into power over the downfall of others and the violations of broken faith. Daylight is not his time of work. The darkness and secrecy of midnight evolve his plans. Behind a somber piety of mien he shakes the loaded dice with devilish zeal. Wall street trembles at his tread, as there is no pity, no remorse, no conscience in his stock-gambling and dealing with men. Slaves and minions, not equals, not advisers, are the "carrion crew" who dance attendance at his beck and call. He orders; they perform; however great, however dark the deed.

> Theirs not to reason why;
> Theirs but to do or die.

But a few years ago this man was compelled to disgorge $8,000,000 to the stockholders of Erie Railroad, and still, in the presence of this, he moves the silent monarch of Wall street, whose touch on the wires and on "the board" sends a quiver through every nerve of the financial organism and wrings private gain from public money. Tweed in a more honorable way gathered in his millions and has been hounded into bankruptcy and to the death. At times, strange is the course, not of the law, but of those managing the law. How long will this injustice continue? Success, with him, is the watchword, whatever the consequences, however attained. To him there is but one rule, "every man has his price," and every man necessary to the accomplishment of his designs must be bought, must be used. When Jim Fisk fell the morals of New York were advanced and a bad example to men was removed from society. Has Gould not learned from this dark career that there is a God in Israel who declares in the words of one of old, "That the triumphing of the wicked is short and the joy of the hypocrite but for a moment."

Henry Adams, a worthy son of an illustrious stock, said in an article that appeared in the Westminster Review for October, 1870:

> Mr. Jay Gould was a partner in the firm of Smith, Gould & Martin, brokers in Wall street. He had been engaged before now in railway enterprises, and his operations had not been of a nature likely to encourage public confidence in his idea of fiduciary relations. He was a broker, and a broker is almost by nature a gambler, perhaps the very last profession suitable for a railway manager. In character he was strongly marked by his disposition for silent intrigue. He preferred as a rule to operate on his own account, without admitting other persons into his confidence, and he seemed never to be satisfied except when deceiving every one as to his intentions. There was a reminiscence of the spider in his nature. He spun huge webs in corners and in the dark, which were seldom strong enough to resist a seri-

ous strain at the critical moment. His disposition to this subtlety and elaboration of intrigue was irresistible. It is scarcely necessary to say that he had not a conception of a moral principle. In speaking of this class of men it must be fairly assumed at the outset that they do not and cannot understand how there can be a distinction between right and wrong in matters of speculation so long as the daily settlements are punctually effected. In this respect Mr. Gould was probably as honest as the mass of his fellows, according to the moral standard of the street; but without entering upon technical questions of roguery, it is enough to say that he was an uncommonly fine and unscrupulous intriguer, skilled in all the processes of stock-gambling, and passably indifferent to the praise or censure of society.

Such is the character of the man who is to control—if restraining legislation is not had—the transcontinental commerce of America. Can this Congress, without any justification whatever, sanction this immense power over that commerce? If so a "corner" can be formed on that commerce any day that Gould may elect. His recent purchase of the controlling stock in the Kansas Pacific Railway is but another step toward the consummation of his plan—seven hundred other miles of railroad power added to that already possessed. Before many more moons have waxed old he will control one of the through lines passing eastward from Kansas City—the Hannibal and Saint Joseph, the Saint Louis, Kansas and Northern, or the Missouri Pacific—to which will be added the Toledo, Wabash and Great Western, making an absolute unbroken line from San Francisco to New York. Shall it be Congress or Gould that is to rule. The question must soon be answered. I am for Congress. Let us declare to him in broad, unmistakable words that neither he nor any other man shall control the commerce of this country through the means of transportation. When the commerce is so governed, soon he will grasp after and possess the political and legislative powers of the States and Congress, and then Gould or some such man will hold the "throttle" of this Government, will convene and disperse Legislatures and Congress at his pleasure, will issue his orders to the people with as much assurance as is now done to his minions and employés, will in fact be monarch of all he surveys. It is but a step from power to tyranny, and that step is soon made if not forbidden. "Eternal vigilance" is the only safeguard of liberty. It is much more easy to check the first encroachment of lawless power than the second. There is but one autocratic power in this land, and that is or should be the law, and that law is or should be but the voice of the people, and all other powers are hurtful and destructive of liberty and good government.

Such a man, "awed by no shame, by no respect controlled," is Jay Gould, the bold Turpin of the commercial gambling of Wall street, the "king of the corner," as he is sometimes called, who made a President a tool and the Treasury Department an accomplice; who has broken faith with everybody and kept faith with nobody; has shattered men and business houses in our land as if worthless toys, and was "the rider of the wind and stirrer of the storm" of that disreputable Black Friday, which will ever remain a memorable day in the history of our country; that man, sir, now stands at the gateway of the great West, with his hand on the commerce of two worlds, levying a heavier tariff upon it than Tarifa ever levied at Gibraltar, and in doing so he is driving other railroads, branch roads to his own by law, into bankruptcy, which were constructed by the beneficence of this Government for the convenience of the internal commerce of an undeveloped empire. It is the duty of this Congress to check and stop it by the force of severe legislation. Soft words will accomplish nothing; promises of reformation are not so effectual and remedial as penal statutes. Is there no remedy to the evil, or did Congress, after creating such dangerous as well as necessary powers, fail to reserve unto itself the right to control that "*imperium*

*in imperio*" within certain bounds under certain restrictions? The Union and Central Pacific Railroads deny the right of Congress to interfere, and base that denial upon the following points:

First. That these corporations hold their property as citizens, and are entitled to its possession, enjoyment, and use as other citizens are, and cannot be deprived of it save by due process of law.

Second. That neither because of the receipt of loans, nor of donations, nor of any trust relative to this property, can the corporations be deprived of the above right.

Third. That Congress cannot make that due process of law, which, in its nature, is not such, and cannot, therefore, by seizure of the property of these corporations, without trial, enforce obedience to its enactments.

Fourth. That under the reserved right to amend and repeal, Congress has only the right to amend and repeal when necessary to accomplish the object of the acts in which it is reserved, and must exercise it with due regard to the rights of said companies.

Fifth. That this reserved power does not enable Congress to take away vested rights of, to, or in property invested in, or acquired under, the charter, before its amendment or repeal.

Sixth. That the franchise of a company enabling it to possess, control, and enjoy property, is vested property, and cannot be taken away or impaired by act of Congress.

Seventh. That the establishment of rules and regulations for the management of these roads would be an invasion of their vested rights, and unconstitutional.

In the language of the report of the committee:

Here we have, therefore, not only the denial of the right of Congress to seize the property which the company has acquired and so use it as to carry out the purpose for which the company was originally allowed to hold it, but the bolder and more defiant denial of the right of Congress to regulate or control the management of that property in the possession of the corporation itself.

We admit that Congress cannot impair the obligations of any contract contained in the charters of these corporations, and that it cannot deprive them of their property, save by due process of law; but we do not assent to the application of these well-recognized principles as made in the case under consideration.

It is a startling proposition that Congress can create an instrumentality which it cannot control, a corporation to promote the public welfare, with unbounded powers—*imperium in imperio*, a monster with capacities of growth and power sufficient to overmaster, defy, and ultimately destroy the government which created it. The mere denial of the power of Congress to regulate and control these corporations tempts its exercise, especially when a crying necessity for its interposition exists.

First. Congress has an unquestionable right to alter, amend, or repeal the acts under which these corporations are organized.

It was reserved with some modification in the original act of 1862, and directly and unqualifiedly in that of 1864. The corporations have accepted these acts and received the benefits bestowed by them. By so doing they have made themselves subject to their conditions.

Mr. Justice Clifford, in the Pennsylvania College case, (13 Wallace, 190,) said:

"Cases often arise where the Legislature, in granting an act of incorporation for a private purpose, either makes the duration of the charter conditional or reserves to the State the power to alter, amend, or repeal the same at pleasure. Where such a provision is incorporated in the charter it is clear that it qualifies the grant, and that the subsequent exercise of that reserved power cannot be regarded as an act within the prohibition of the Constitution."

Cooley, in his work on Constitutional Limitations, (page 383,) says:

"A franchise granted by the State, with a reservation of the right of repeal, must be regarded as a mere privilege while it is suffered to continue; but the Legislature may take it away at any time, and the grantees must rely for the perpetuity and integrity of the franchises granted to them solely upon the faith of the sovereign grantor!"

The power to alter and amend is unlimited so long as its exercise does not essentially destroy or paralyze the franchise. Mr. Justice Redfield, in Thorpe *vs.* Rutland and Burlington Railway, said:

"The privilege of running the road and taking tolls or fare and freight is the essential franchise conferred. Any act essentially paralyzing this franchise, or destroying the profits therefrom arising, would, no doubt, be void; but beyond that, the entire power of legislative control resides in the Legislature, unless such power is expressly limited in the grant to the corporation."

In my opinion it would be wise for us to announce from this House

at this session that Congress, possessing the power "to regulate commerce," "to promote the general welfare," and "secure the blessings of liberty" to "ourselves and our posterity," and the right to enforce the obedience of persons and corporations to its laws, that it will not abandon or surrender that right under any circumstances to any person or power, but will, if necessary, subject all to the severest legislative control. The assertion of a constitutional and legal right is the very essence of a vital government, the failure of its execution the primogeniture and evidence of decay. The contest now is between corporations and the Government, Jay Gould and Congress, might against right, individual robberies against individual rights, fraud against justice, between desperate men "in whose hands is mischief and whose right hand is full of bribes" and the powerless patrons of their roads; and I shall not hesitate to take the side of the Government and the people, the side of justice and right; and he who limps and falters now will be observed and marked by his constituents, if they have ever felt the iron hand of corporate injustice resting heavily upon them.

I am for protecting these corporate powers in the possession and exercise of all their necessary rights; would not have the Government interfere with nor in any way divest them of any "vested rights," of any absolute privilege or authority to run, manage, control, and govern their roads and machinery in any reasonable and legal way that would yield to the companies the largest returns and to the public speedy and economical means of transit; but at the same time I would not surrender to them the rights of individuals, States, and the Government. It is true that they are an essential element to our greatness, and without them the Government would be a rope of sand; therefore to my mind it is the more necessary to restrain their power, to limit their ambition by the power and force of the law. Under no state of the case will I admit that Congress has, that Congress can, invest them with a power greater than the Government itself, or has or can give them a power, a right, or a privilege destructive of the Government, of the liberties of the people, which Congress cannot "amend, alter, or repeal," as a means of self-defense, of self-protection. I may give a man rights and privileges upon my premises, in my house for a day, for a month, for a year, but if within that time he seeks to destroy my rights, my property, I can, and it is my duty, to restrain and dispossess him of those privileges and rights. The great law of self-defense applies as well to communities, States, and to governments, as to individuals. As before stated, Congress can provide a remedy against the undue aggressions of corporate powers in cases like the one before this House. Remedial statutes constitute the great body of legislative enactments.

It is astonishing how small is the bulk of all acts granting, enlarging, restricting, or in any way dealing with rights. Rights are held, enjoyed, restricted by the fundamental rules of social order. Remedies by which they are assured, vindicated, hedged about, are contrivances of human ingenuity, and for their aptness to meet exigencies are variable and subject to change. Hence, the distinction taken between rights and remedies in enforcing the clause of the Constitution forbidding legislation which impairs the obligation of contracts. Rights are within, remedies without, the protection of the clause. This bill, dealing only with the remedy, is not obnoxious to the objection.

Furthermore, this bill regulates only the exercise of the franchises conferred by the acts of 1862 and 1864 on these companies. The recent learned discussion in the Senate on the funding bill, with reference

to the extent of the power of amendment reserved in those acts, related to the contract of loan contained therein. All the Senators, notably HILL of Georgia, admitted that the power of amendment thus reserved extended to and was unlimited in respect of the franchise. As a remedial statute regulating the franchise only this bill is not open to objection upon the principles laid down by the warmest friends of the Union Pacific.

Let it be observed what Congress has done and what it now proposes to do:

First. It has, in order to reach certain great ends and objects, constructed a contrivance singularly fitted to that purpose, and prescribed a rule for its government.

Second. That contrivance has proved unequal to the great ends for which designed, owing to the perversity of men charged with its operation, and that rule has been ignored and disobeyed, so as to literally cripple and bankrupt a part of the system of roads built for the accommodation of travel and commerce along one of the currents or lines of trade mentioned at an earlier period in the argument.

Third. This bill, although not as simple, practicable, and commensurate to the necessities of the case as I would have it, yet is a step in the right direction, and proposes, as far as it goes, a fit mode of supplying the defects in the contrivance and constraining obedience to the rule. It is not open to dispute that the power to remedy the evil is within the competency of Congress, and it should not be slow in exercising it, when it is known that if not done $10,000,000 will be lost to the Government, and those failing to protect that vast amount of money will be derelict to their highest obligation. Unless the Kansas Pacific Railroad is made to share a part of the transcontinental commerce and travel of this country by being recognized as a branch of the Union Pacific Railroad, the law of Congress will be made null and void by the artifice of man, the $6,303,000 advanced by the Government toward its construction, with its annuated interest now aggregating in the whole nearly $9,000,000, will be lost beyond recovery, which can and should be avoided by wise legislation.

Since the committee has made a favorable report to the House on the bill the Union Pacific Railroad has made such an agreement with the managers of the Kansas Pacific that the former will hereafter have control of the latter road. This stock-trade should not operate against this bill; it only shows the greater necessity for it. A leading Western journal says of the trade:

> This understanding between these competing lines is of course to be regretted, so far as the public interest is concerned, since it practically insures the continuance of the old monopoly of the transcontinental business. It is of the utmost importance, besides, that Congress should not mistake this understanding as in any shape sufficient reason for the abandonment of the bill appointing commissioners to regulate these roads and arbitrate all disputes. The differences which are harmonized in this agreement between the managers are matters wholly of a personal kind, and the grave public questions which have been at issue still remain. It is, in fact, doubly necessary, now that the affairs of the two roads will be under the same management, that there should be Government commissioners to look after the interests of the public. Congress has not been projecting legislation for the benefit of individuals and there is nothing in this agreement which can alter the public aspect of the case. It is just as necessary as ever that the public shall be guaranteed that no discriminating rates will be made to divert trade to the Union Pacific line, for it might be the policy of the Union Pacific Company to throw just enough business to the Kansas Pacific to give the guaranteed protection to its securities, and then to compel by arbitrary rates the remainder to take the longer haul over the Union Pacific. It is also necessary that the new combination should be compelled to make the same rates for all patrons and not discriminate so as to give favored persons advantages not enjoyed by the general public. These things will have to be carefully looked after, and it is doubly important for Congress to regard them now. This is a trade between individuals, with no good design, with

no good purpose. It was made to accomplish selfish ends at the expense of communities, and, if possible, to prevent any action of Congress in the interest of commerce and those communities. Congress should not hesitate to pass this bill, even in the face of this piece of sharp practice. When a gambling-house is raided by the officers of the law, the gamblers are sometimes found engaged in religious services, but as soon as the officers have departed the rattle of the checks is heard, and "On with the dance" is the shout. So it will be with these two roads as soon as Congress adjourns.

In the face of all the facts presented should nothing be done by this Congress? It is a serious question, and should be carefully answered. Nothing yet has been done to check or restrain these immense corporate powers. The passage of the Thurman funding bill only compels the Union and Central Pacific to refund to the Government within a certain time in a certain way money advanced to or guaranteed by the Government in the construction of those roads. Something is absolutely required to regulate the transit of passengers and commerce over this system of roads in conformity to the purposes for which that system was created and inaugurated. It is not transcending legal or constitutional limits to enact into law the bill reported by the Committee on the Pacific Railroad, denominated the commissioners bill; and its enactment will, in my opinion, have a salutary effect upon the honest management of that system. Instead of that system or family of roads being managed in the interest of an exclusive few, and by that "few," although designed, nurtured, and constructed to a great extent by the Government, it would become under the board of commissioners a public benefit and a blessing to mankind. But, it will be said, who will guard the virtue of the tribunal? Why would the corporations not deal with them as with the Legislatures or Congress? They may do so, but somewhere and at some point, put on all the checks and balances that human ingenuity can devise, we must come back and rely on human honesty at last. One rule always holds good: where the most direct responsibility exists, there will the best conduct be found. Corruption loves a throng, and shrinks from isolated places; to divide responsibility is to destroy it. The judges of our courts are rarely otherwise than pure; the heads of our Departments are (should be) conspicuous for honesty; they are always directly and individually responsible. If we thus can, and indeed from the necessity of the case must, confide the charge of public funds and our personal liberties to mortals like ourselves, acting under the law, it is difficult to see why, except that we never have done so, we cannot trust those great commercial interests to be regulated and managed by this board of commissioners, composed as it will be of three of the leading men of our country, upon whose reputations, private or public, no stain has or could rest for a moment. The laws and commerce of our land will be safe in their hands. They will deal out equal and exact justice to every road placed under their supervision without favor, fear, or affection. To such men the point of responsibility is the most elevated point of honor, of justice. Years ago, Charles Francis Adams, jr., said: "Meanwhile, so far as the railroad system is concerned, it seems almost inevitable that the General Government must soon or late and in a greater or less degree assume jurisdiction" over such roads, and I will cheerfully indorse the wisdom of such a step. I am for preserving the power in the hands of the people, where our fathers found it and left it. It is always safe there. They are ever the friends of liberty and good government. In the language of Burke: "Let us place our feet in the tracks of our fathers, where we can neither fall nor stumble."

JUNE 19, 1878.

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PACIFIC RAILROAD COMMISSIONERS.

Mr. CRITTENDEN. I move to suspend the rules and take from the public Calendar and put upon its passage the bill (H. R. No. 4399) to establish a board of Pacific Railroad commissioners.

It is a bill to compel the Union Pacific and Central Pacific Railroads to prorate with the branches of Pacific Railroads built by aid from the Government, and reported from the Committee on the Pacific Railroads by Mr. RICE, of Massachusetts.

Mr. BOUCK. Is not my motion for a recess first in order?

The SPEAKER *pro tempore*. The Chair rules that pending a motion to suspend the rules but one motion is in order, and that is to adjourn.

Mr. PRICE. But the motion for a recess was made before the motion of the gentleman from Missouri.

The SPEAKER *pro tempore*. But the Chair did not recognize the gentleman to make that motion.

The bill was read, as follows:

*Be it enacted, &c.*, That Charles Francis Adams, jr., of Massachusetts; Albert Fink, of Kentucky; and Thomas M. Cooley, of Michigan, and their successors, to be appointed as hereinafter provided, are hereby constituted a board of commissioners, to be known and designated as the board of Pacific Railroad commissioners, who shall hold their offices from the date of the enactment of this law until three years from the 1st day of January next. Before the end of said term and of each succeeding term of three years the President of the United States shall nominate and, by and with the advice and consent of the Senate, appoint three commissioners of said board, who shall hold their offices for the term of three years from the expiration of the preceding term. In case of any vacancy in said board occurring by declination, resignation, or otherwise, the President shall, in like manner, appoint a commissioner for the residue of the term; and he may, in like manner, remove any commissioner. One of the commissioners of said board shall be a person skilled in law and another a person skilled in the management and operation of railroads.

SEC. 2. Said board of commissioners shall have a general supervision of the roads of the Central Pacific Railroad Company, the California and Oregon Railroad Company, the Oregon and California Railroad Company, the Oregon Central Railroad Company, the Union Pacific Railroad Company, the Kansas Pacific Railroad Company, the Denver Pacific Railroad and Telegraph Company, the Sioux City Pacific Railroad Company, the Burlington and Missouri Pacific Railroad Company, the Western Pacific and the Central Branch of the Union Pacific Railroad Company, the Northern Pacific Railroad Company, the Atlantic and Pacific Railroad Company, the Southern Pacific Railroad Company, and of all railroad corporations which shall hereafter receive any aid in lands, bonds, or credit, by act of Congress granting the same, or renewing or continuing any grant thereof heretofore made. Said board shall have an official seal, and a clerk, to be appointed by it, who shall keep a faithful record of its proceedings. It shall have an office in the city of Omaha, in the State of Nebraska, where its records shall be kept. Said commissioners and clerk shall be sworn to the due and faithful discharge of their duties before entering upon the same. No one of them shall be in the employ of any one of the corporations aforesaid, nor own any of the stock or bonds of any of them, nor hold nor exercise any office or employment inconsistent with the full and impartial discharge of their duties under this act. Said board may act notwithstanding a vacancy, and the action of a majority of the commissioners shall be the action of the board.

SEC. 3. It shall be the duty of said commissioners, from time to time, and as often as need be, to examine the several roads of said corporations and their books and papers, and to inform themselves of the condition of said roads, and of their rolling-stock, stations, and station-houses, and of the manner in which they are operated, and of the rates and charges for which they transport freight and passengers, and of their connections and relations with each other and with other roads, that they may know whether said corporations respectively furnish to the public and each other safe and convenient accommodations at reasonable and proper rates, and perform and discharge their duties to the Government, the public, and each other, and fully perform and accomplish the purposes for which they were established, in accordance with the various acts of Congress under which they are organized and the laws of the land.

SEC. 4. After consultation with the officers of the corporations interested, the said commissioners shall proceed to establish rules and regulations to govern the operation and management of the roads of said corporations, and shall supervise the observance thereof, so as to afford and secure to the Government and the public all the advantages of intercommunication, travel, and transportation over said roads as stipulated and defined in the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862, and of all acts amendatory thereof and supplementary thereto, as well as to secure and enforce the reciprocal rights and duties of said corporations, which rules and regulations shall govern said corporations in the operation and management of their respective roads until the same shall be revised, altered, or annulled by said commissioners, or by decree of the circuit or Supreme Court of the United States, as hereinafter provided. Said commissioners shall cause copies of such rules and regulations, certified by their clerk, to be served on all of said corporations affected thereby.

SEC. 5. When any controversy shall arise between any of said corporations as to their mutual rights and duties, or any corporation or individual shall have cause of complaint against either of said corporations, the aggrieved corporation or individual may file with said commissioners a petition, in writing, stating the matter of complaint. Whereupon said commissioners, after due notice, shall hear the parties and their witnesses, and determine the difference between them, and shall make their award or decision in writing, stating the grounds thereof, and shall cause a copy of said award or decision, certified by their clerk, to be served on each of the parties.

SEC. 6. Whenever it shall appear to said commissioners that any one of said corporations has failed to provide for the public safe and suitable accommodations, or has made exorbitant charges or unjust discriminations, or has failed to perform any of its duties to the Government, or to any other of said corporations, or to the public, or to comply in any respect or particular with the acts of Congress or the laws of the land, or whenever in their judgment any repairs are necessary upon the road of any one of said corporations, or any addition to its rolling-stock, or any addition to or change of its stations or station-houses, or any change in its rates of fares for transporting freights and passengers, or any change in its mode of operating its road or conducting its business, is reasonable or expedient in order to promote the security, convenience, and accommodation of the public, and the purposes for which it was established, said commissioners shall make such rules and regulations, directions and orders, in said respects, not inconsistent with the provisions of the acts of Congress aforesaid, as to them may seem proper and necessary, and shall notify said corporation by serving upon it a copy of the same, certified by their clerk. Said commissioners shall make no rules, regulations, or orders which, in their judgment, will impair the ability of any of said corporations to meet the payments which may be or become due under any existing law or any which may be hereafter enacted by Congress. The service provided in this and the preceding sections shall be made upon the clerk, treasurer, or any director of the corporation, by any officer authorized to serve a legal process of the courts of the United States or of the State where the service is made. Said commissioners may issue subpœnas for the attendance of witnesses and the production of books and papers at any hearing or examination under this act, and may administer oaths whenever necessary in the same.

SEC. 7. If any one of said corporations shall neglect or refuse to perform or comply with any decision, rule, regulation, direction, or order of said commissioners, made and served as aforesaid, any party aggrieved, or the said commissioners, may file a bill in equity in the circuit court of the United States for the circuit in which the road or any part of the road of the delinquent corporation may be situate, setting forth the matter of complaint, together with the decision, rule, regulation, direction, or order of said commissioners alleged to be violated, and praying a decree declaring the rights and duties of the parties, and enforcing said decision, rule, regulation, direction, or order, and also such interlocutory order as he or they may deem necessary. And thereupon it shall be the duty of the judge of the court in which the said bill is filed to direct the issue of such restraining or mandatory injunction as will compel the immediate performance of the decision, rule, regulation, direction, or order of said commissioners: *Provided, however*, He is satisfied that a proper case therefor is made by the complainant for such injunction, and that the same does not order final and permanent action in the matter of repairs, additions, and changes. The defendant shall answer such bill, and the proofs of the parties shall be taken within a time prescribed by said judge, which shall be as brief as, in his judgment, may be consistent with the rights of the parties and the proper preparation of the case, and service of process in said suit may be made anywhere in the United States. Such cause shall have precedence of all other business in any court in which it may be pending, and may be heard by a judge in court or at chambers, upon thirty days' notice, to be given by either party to the other. The orders, decrees, or judgments of said judge or court shall not be superseded

by any bonds or other securities, but shall remain in full force until vacated, modified, or reversed by the judge or court making the same or by the United States Supreme Court.

SEC. 8. Said railroad corporations shall at all times, on demand, furnish said commissioners any information required by them concerning the condition, management, and operation of their roads, and shall allow them access to their books, and shall, on demand, furnish them copies of all leases, contracts, and agreements for transportation to which they are parties, and also the rates for transporting freights and passengers on their roads and on the roads with which their roads respectively have connection in business.

SEC. 9. Said corporations shall make report to said commissioners at such time and in such manner as they shall direct; and said commissioners shall, in the month of January in each year, make a report to Congress of their doings for the preceding year, including all decisions, rules, regulations, directions, and orders made by them as aforesaid, and containing such facts, statements, and explanations as will disclose the actual working and condition of the roads under their supervision and their influence and bearing upon the business and prosperity of the country and such suggestions as to said roads and the corporations owning them, and their effect and policy, and the policy to be pursued toward them, as to said commissioners may seem appropriate.

SEC. 10. Said commissioners shall receive a salary of $10,000 per annum each, to be paid them in equal quarterly installments from the Treasury of the United States, out of any money not otherwise appropriated. They and their clerks shall be allowed to pass free over all the roads under their supervision. Their clerk shall be paid $2,500 per annum, payable as above. They shall also be allowed the expenses for their office, and for books, maps, stationery, and other expenses incidental to the discharge of their duties. A detailed statement of all their expenses shall be given in their annual report to Congress. All these salaries and expenses shall be borne by the several corporations under their supervision as near as may be in proportion to their gross receipts. Said commissioners shall determine the amount to be paid by each corporation and report the same annually in the month of January to the Secretary of the Treasury of the United States, who shall give notice to said corporations of the amounts to be paid by them respectively. Said corporations shall severally, within thirty days after such notification, pay into the Treasury of the United States the amounts thus apportioned to each, and the Secretary of the Treasury may in default of such payment retain the same out of any moneys due or to become due to said several delinquent corporations from the United States.

SEC. 11. Nothing in this act contained shall be construed in any manner or degree to relieve any one of said railroad corporations from any of its legal duties and obligations, or from its legal liability under the acts of Congress or the laws of the land for the consequences of neglect or mismanagement, or to affect the right of any one of said corporations to commence and prosecute any suit or suits in law or equity which it might now so commence and prosecute, or to prevent any individual or corporation from bringing suit against it, as might be done under existing laws.

Mr. REA. I have an amendment to offer which I understand my colleague will accept.

The Clerk read the proposed amendment, as follows:

At the end of section 4 insert:

*Provided*, No order or rule requiring one line to prorate with another that shall be adopted or carried into effect shall give one line of road, which may connect with any of the roads mentioned in this bill, any advantage over another to the same common point.

The SPEAKER *pro tempore*. The Chair desires to inquire of the gentleman from Missouri [Mr. CRITTENDEN] if he accepts that as a part of the bill.

Mr. CRITTENDEN. I do accept it.

Mr. LUTTRELL. There is a clerical error in the bill as reported, which I desire to have corrected. In the second section of the bill the Texas Pacific Railroad has been omitted, and it was the intention of the Committee on the Pacific Railroad to include every Pacific railroad.

Mr. CRITTENDEN. I will agree to incorporate that in the bill.

Mr. PAGE. Does this bill include all the roads that have been subsidized by the Government?

Mr. CRITTENDEN. It includes all in the bill.

Mr. SAPP. I desire to make a parliamentary inquiry.

The SPEAKER *pro tempore*. The gentleman will state it.

Mr. SAPP. Is it in order now to move an amendment to this bill?

The SPEAKER *pro tempore*. It is not; the pending motion is to suspend the rules and pass the bill.

Mr. HASKELL. If two-thirds do not vote for a suspension of the rules, will the bill be returned to the Speaker's table?

The SPEAKER *pro tempore*. It will remain in Committee of the Whole, where it is now.

Mr. SAPP. Then I hope it will remain there, so that it can be properly considered.

Mr. CANNON, of Illinois. I desire to make a parliamentary inquiry.

The SPEAKER *pro tempore*. The gentleman will state it.

Mr. CANNON, of Illinois. Would it be in order for me to ask unanimous consent that the gentleman from Missouri [Mr. CRITTENDEN] have leave to explain the provisions of this bill? I do not know anything about it, and cannot tell how to vote. [Cries of "Regular order."]

The SPEAKER *pro tempore*. No debate is in order.

Mr. HEWITT, of Alabama. I move that the House now take a recess until eight o'clock this evening.

The SPEAKER *pro tempore*. That is not in order, pending a motion to suspend the rules.

The question was taken upon the motion of Mr. CRITTENDEN; and upon a division, there were—ayes 42, noes 73.

Before the result of this vote was announced,

Mr. CRITTENDEN called for the yeas and nays.

The question was then taken upon ordering the yeas and nays; and on a division, there were—ayes 36, noes 136.

Before the result of this vote was announced,

Mr. PATTERSON, of Colorado, called for tellers on ordering the yeas and nays.

The question was taken upon ordering tellers; and there were 22 in the affirmative, not one-fifth of a quorum.

So tellers were not ordered.

The yeas and nays were ordered, more than one-fifth having voted in the affirmative.

Mr. SAYLER. I move that the House now take a recess until eight o'clock.

Mr. O'NEILL. I hope we will not take a recess until the letter-carrier bill has been taken up and acted upon.

Mr. SAYLER. I understand that the gentleman from New York [Mr. COX] desires to have action upon the letter-carrier bill; and I will withdraw my motion for a recess.

The SPEAKER *pro tempore*. The question recurs upon the motion of the gentleman from Missouri, [Mr. CRITTENDEN,] to suspend the rules so as to discharge the Committee of the Whole from the further consideration of the bill which has been read, and to pass the same with the amendments which have been indicated. Upon this question the yeas and nays have been ordered.

The question was taken; and there were—yeas 105, nays 103, not voting 82; as follows:

YEAS—105.

| | | | |
|---|---|---|---|
| Aiken, | Bell, | Boone, | Browne, |
| Bacon, | Blackburn, | Brewer, | Cabell, |
| Baker, John H. | Blount, | Bright, | Caldwell, John W |

| | | | |
|---|---|---|---|
| Caldwell, W. P. | Forney, | Marsh, | Schleicher, |
| Candler, | Franklin, | Mayham, | Singleton, |
| Chalmers, | Garth, | McKenzie, | Southard, |
| Claflin, | Gibson, | McMahon, | Sparks, |
| Clark, Alvah A. | Giddings, | Metcalfe, | Springer, |
| Clark of Missouri, | Goode, | Mills, | Starin, |
| Clarke of Kentucky, | Hamilton, | Morrison, | Steele, |
| Cobb, | Harris, Henry R. | Morse, | Stenger, |
| Cole, | Harris, John T. | Muldrow, | Throckmorton, |
| Cook, | Hartridge, | Norcross, | Townshend, R. W. |
| Covert, | Hartzell, | Peddie, | Turner, |
| Cox, Samuel S. | Haskell, | Phillips, | Vance,, |
| Crapo, | Herbert, | Pridemore, | Veeder, |
| Cravens, | Hewitt, G. W. | Pugh, | Waddell, |
| Crittenden, | Hooker, | Ree, | Warner, |
| Culberson, | House, | Reagan, | Whitthorne, |
| Davidson, | Ittner, | Reilly, | Williams, A. S. |
| Davis, Horace | Jones, James T. | Rice, Americus V. | Willits, |
| Davis, Joseph J. | Ligon, | Rice, William W. | Wilson, |
| Dibrell, | Lindsey, | Riddle, | Yeates, |
| Eden, | Loring, | Robbins, | Young. |
| Elam, | Luttrell, | Robertson, | |
| Ellis, | Maish, | Ryan, | |
| Ewing, | Manning, | Scales, | |

NAYS—103.

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|---|---|---|---|
| Aldrich, | Cutler, | Hiscock, | Pound, |
| Bagley, | Danford, | Hubbell, | Powers, |
| Baker, William H. | Deering, | Humphrey, | Price, |
| Banks, | Denison, | Hungerford, | Rainey, |
| Banning, | Dickey, | Hunter, | Reed, |
| Bicknell, | Dunnell, | Jorgensen, | Robinson, G. D. |
| Bisbee, | Durham, | Keifer, | Ross, |
| Blair, | Dwight, | Keightley, | Sampson, |
| Bliss, | Eames, | Kelley, | Sapp, |
| Bouck, | Ellsworth, | Kenna, | Sayler, |
| Boyd, | Evans, I. Newton, | Ketcham, | Shallenberger, |
| Bragg, | Evans, James L. | Lapham, | Sinnickson, |
| Brentano, | Evins, John H. | Lathrop, | Smalls, |
| Briggs, | Finley, | Lockwood, | Smith, A. Herr |
| Brogden, | Foster, | Lynde, | Stewart, |
| Burdick, | Freeman, | McCook, | Strait, |
| Butler, | Gardner, | Mitchell, | Townsend, Amos |
| Cain, | Garfield, | Monroe, | Wait, |
| Campbell, | Hanna, | Muller, | Ward, |
| Carlisle, | Hardenbergh, | Neal, | Watson, |
| Caswell, | Harmer, | Oliver, | Welch, |
| Chittenden, | Harrison, | O'Neill, | Williams, Andrew |
| Clark, Rush | Hart, | Overton, | Williams, Richard |
| Conger, | Hayes, | Page, | Willis, Albert S. |
| Cox, Jacob D. | Hazelton, | Patterson, G. W. | Willis, Benj. A. |
| Cummings, | Henderson, | Phelps, | |

NOT VOTING—82.

| | | | |
|---|---|---|---|
| Acklen, | Fort, | Knott, | Swann, |
| Atkins, | Frye, | Landers, | Thompson, |
| Ballou, | Fuller, | Mackey, | Thornburgh, |
| Bayne, | Gause, | Martin, | Tipton, |
| Beebe, | Glover, | McGowan, | Townsend, M. I. |
| Benedict, | Gunter, | McKinley, | Tucker, |
| Bland, | Hale, | Money, | Turney, |
| Bridges, | Harris, Benj. W. | Morgan, | Van Vorhes, |
| Buckner, | Hatcher, | Patterson, T. M. | Walker, |
| Bundy, | Hendee, | Pollard, | Walsh, |
| Burchard, | Henkle, | Potter, | White, Harry, |
| Calkins, | Henry, | Randolph, | White, Michael D. |
| Camp, | Hewitt, Abram S. | Roberts, | Wigginton, |
| Cannon, | Hunton, | Robinson, M. S. | Williams, C. G. |
| Clymer, | James, | Sexton, | Williams, James |
| Collins, | Jones, Frank | Shelley, | Williams, Jere N. |
| Dean, | Jones, John S. | Slemons, | Wood, |
| Douglas, | Joyce, | Smith, William E. | Wren, |
| Eickhoff, | Killinger, | Stephens, | Wright. |
| Errett, | Kimmel, | Stone, John W. | |
| Felton, | Knapp, | Stone, Joseph C. | |

So (two-thirds not voting in favor thereof) the rules were not suspended.

During the call of the roll the following announcements were made:

Mr. FORNEY. I desire to announce that my colleague, Mr. SHELLEY, is paired with Mr. THOMPSON, of Pennsylvania.

Mr. ACKLEN. I am paired with Mr. CALKINS, of Indiana.

Mr. BLOUNT. My colleague from Georgia, Mr. SMITH, is detained from the House on account of sickness.

Mr. BURDICK. My colleague from Iowa, Mr. STONE, is paired with Mr. MONEY, of Mississippi.

Mr. McGOWAN. I am paired with Mr. GUNTER, of Arkansas.

Mr. JOYCE. I am paired with Mr. BEEBE.

Mr. STONE, of Michigan. I am paired with Mr. MARTIN, of West Virginia.

Mr. PATTERSON, of Colorado. I am paired with Mr. WHITE, of Indiana.

The result of the vote was then announced as above stated.

U. S. Court of Claims

# UNION PACIFIC RAILROAD

vs.

# UNITED STATES.

## FIVE PER CENT. CASE IN COURT OF CLAIMS.

APRIL 13, 1878.

DRAKE, Ch. J., delivered the following opinion, concurred in by RICHARDSON, J.:

Before the 12th of May, 1874, and between that day and the date of the institution of this suit, the claimant performed service for the government in the transmission of dispatches over its telegraph line, and in the transportation of mails, troops, munitions of war, supplies, and public stores upon its railroad. For the services so rendered the accounting officers of the Treasury Department have approved and allowed accounts to the amount of $1,187,254.21, and that sum is now due and unpaid on account of those services.

There is no controversy as to the rights of the respective parties in regard to that sum. The defendants are entitled to retain one-half of it in the Treasury, toward the ultimate payment of bonds of the United States issued to the claimant; and the claimant is entitled to be paid the other half, provided the defendants' counter-claim cannot be set off against it.

This counter claim is for "five per centum of the net earnings" of the claimant's road after its completion, and is claimed by the defendants under section 6, of the act of July 1, 1862, "*to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes.*" (12 Stat. L., 489.)

As in the decision of the questions arising under the counter-claim, the third, fourth, fifth, and sixth sections of that act will be more or less brought under discussion, we present the material parts of them, as they were enacted, with some amendments incorporated, which were made by the act of July 2, 1864. (13 Stat. L., 356.)

SEC. 3. That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of ten alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed.

SEC. 4. That whenever said company shall have completed twenty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first-class railroad, the rails and all the other iron used in

the construction and equipment of said road to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that twenty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each twenty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise, shall be filled by the President of the United States: *Provided, however*, That no such commissioners shall be appointed by the President of the United States, unless there shall be presented to him a statement, verified on oath by the president of said company, that such twenty miles have been completed, in the manner required by this act, and setting forth with certainty the points where such twenty miles begin and where the same end, which oath shall be taken before a judge of a court of record.

SEC. 5. That for the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of twenty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest (said interest payable semi-annually), which interest may be paid in United States Treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender to the amount of sixteen of said bonds per mile for such section of twenty miles; and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling-stock, fixtures, and property of every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States: *Provided*, This section shall not apply to that part of any road now constructed.

SEC. 6. That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service), and one-half of all compensation for services rendered for the government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, treasury-notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.

The whole controversy in the case grows primarily out of these words at the close of the sixth section: "*And after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.*"

In support of the counter-claim, the defendants contend that the road was completed, within the meaning of those words, on or before the 6th of November, 1869; and that thereafter there were net earnings of the road; of which the claimant was bound to apply annually 5 per cent. to the payment of the bonds issued to it by the United States.

Against the counter-claim the claimant insists that the road was not completed until the 1st of October, 1874; and that its net earnings were less than contended for by the defendants.

Two questions are therefore to be passed upon by the court, namely:

1. When was the Union Pacific Railroad completed from Omaha to its

estern terminus, within the meaning of the act aforesaid? And 2. hat were its annual net earnings after the date of its completion?

Before proceeding to discuss those points, a question raised by the aimant must be disposed of, for it suggests a view which, if sustained, ould be fatal to any recovery on the counter-claim. The question is, hether it was not the purpose of section 10 of the act of 1864, to post- ne the payment of the 5 per cent. of the net earnings until the new ortgage debt and its interest, which that section authorized, should first discharged?

The following is the section referred to:

SEC. 10. That section five of said act be so modified and amended that the Union Pacific ilroad Company, the Central Pacific Railroad Company, and any other company au- orized to participate in the construction of said road, may, on the completion of ch section of said road, as provided in this act and the act to which this act is an endment, issue their first-mortgage bonds on their respective railroad and telegraph es to an amount not exceeding the amount of the bonds of the United States, and even tenor and date, time of maturity, rate and character of interest, with the nds authorized to be issued to said railroad companies respectively. And the lien of e United States bonds shall be subordinate to that of the bonds of any or either of id companies hereby authorized to be issued on their respective roads, property, and uipments, except as to the provisions of the sixth section of the act to which this t is an amendment, relating to the transmission of dispatches and the transportation mails, troops, munitions of war, supplies, and public stores for the Government of e United States.

We are unable to perceive how the effect suggested can be given to is section, or to see the force of the train of reasoning by which the arned counsel for the claimant sought to give it that effect. We need ot stop to controvert his position in detail, but will state our own ews of the subject.

The act of 1862, in aid of the construction of the Union Pacific Rail- ad, made four different grants to the claimant, viz: 1. The right of ay through the public lands; 2. The right to take from the adjacent blic lands materials for the construction of the road; 3. Alternate sec- ons of public lands; and, 4. Bonds of the United States to the amount $16,000 per mile.

The issue and delivery of those bonds to the claimant was declared the act to constitute a first mortgage on the whole line of its railroad, gether with the rolling-stock, fixtures, and property of every kind and escription appertaining thereto.

That is the sole lien imposed by that act on the property of the aimant.

But the grants above specified are declared to be made upon four nditions, viz: 1. That the claimant should pay said bonds at maturity; That it should keep its railroad and telegraph line in repair and use; That it should at all times transmit dispatches over said telegraph ne, and transport mails, troops, and munitions of war, supplies and blic stores, upon said railroad for the government whenever required do so by any department thereof; and, 4. That the government should all times have the preference in the use of the road and telegraph ne for the purposes aforesaid.

In addition to the lien and conditions so imposed and declared, the xth section made the provision aforesaid in regard to the five per cent. the net earnings of said road.

That provision imposed an obligation on the claimant which, by ac- pting the charter, it agreed to fulfill; but it was not declared that that bligation constituted a lien on the road, or that the grants made to the aimant, as above stated, were to be conditional upon the payment of

the five per cent. It was simply a naked legal obligation, dependent for its fulfillment merely on the existence of net earnings.

Such being the state of the master, the tenth section of the act of 1864 authorized the claimant to issue $16,000 per mile of first-mortgage bonds, and in connection with that authority declared that "the lien of the United States bonds shall be subordinate to that of the bonds * * * hereby authorized to be issued, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of dispatches and the transportation of mails, troops, munitions of war, supplies, and public stores for the Government of the United States."

The confusion produced in that sentence, by declaring an *exception* where none in fact existed or could in the nature of things exist, since the matter excepted is wholly different in character from that from which it is excepted, tends to confusion in its construction. Without stopping to discuss it, we hold that the sentence means simply this: 1. That the government yields its priority of lien on account of its bonds, and, 2. Reasserts and reimposes the condition declared in the sixth section of the act of 1862, as to the transmission of dispatches and the transportation of mails, troops, &c.

Has that provision any bearing on the five per cent. question involved in the present case? We think not. If it appeared that the earnings of the claimant's road, after paying the expenses of its management and operation, were not sufficient to pay the interest on the first-mortgage bonds issued under the authority of that tenth section, we should not hesitate to hold that the government could not demand the payment of the five per cent. But no such fact exists. On the contrary, those earnings are largely more than enough to pay both the interest on those bonds and the five per cent. No question, therefore, arises here, such as might arise between the government and the first-mortgage bondholders, if the earnings were insufficient to pay that interest, and the government should nevertheless insist on the payment of the five per cent. The question now is, whether that section, as between the claimant and the defendants, on the facts now shown to exist, affects the obligation of the claimant to pay the five per cent. We are clear that it does not. It does not refer in terms to that obligation; nor does it release the claimant from its contract to pay at maturity the bonds received by it from the government; nor does it annul or release the government's lien for the payment of those bonds. It simply subordinates "the lien of the United States bonds" to that of the first-mortgage bonds, and does no more; leaving the five per cent. obligation in full force, and not postponed until the new mortgage debt and its interest should be first discharged.

Proceeding now to consider the sections of the act of 1862, in connection with the subject-matter of the completion of the road, there are certain propositions which do not need extended argument for their establishment, but may be considered as entirely plain on the mere reading of the sections, and not capable of being overthrown by any argument. They are as follows:

1. The obligation to complete the road rested solely on the claimant.

2. The completion of the road was, therefore, to be determined solely by what the claimant did in building it.

3. As rights and obligations *inter partes* depended on the fact of the completion of sections of the road, and, finally, of the whole road, the *fact* of completion in each case was of necessity to be ascertained and declared in some way binding and conclusive on both parties.

4. The act prescribes how the fact of completion should be ascertained and declared.

5. The defendants having enacted and the claimant accepted that act, they thereby mutually agreed that the fact of completion should be ascertained and declared as in that act prescribed, and not otherwise.

6. When the fact of completion of any section of the road was ascertained and declared in the way prescribed in the act, that fact was finally and immovably settled and determined, as between the claimant and the defendants, and could not be unsettled or changed by any executive authority, nor, except for fraud, by any judicial authority.

We do not pause to comment upon or amplify these propositions, believing them too plain to need either comment or amplification. If this be so, then we have only to give the legal deductions which seem to us to flow from them.

1. In the first place, the ascertainment and declaration, in the way prescribed in the act, of the completion of any section of the road did, in and of itself, confer on the claimant the right to demand and receive lands and bonds, and impose on the defendants the obligation to convey and deliver the lands and bonds.

2. The claimant, having demanded and received the lands and bonds, as provided in the act, for each several section of completed road from end to end of the line, expressly on the ground that each section was "completed and equipped in all respects as required by said act," cannot be permitted afterward to deny the fact of the completion of any such section.

3. The completion of the *whole* road, when ascertained and declared as aforesaid, did, in and of itself, confer on the defendants the right to demand, and impose on the claimant the obligation to pay, five per cent. of the net earnings of the road.

4. The claimant having, through the oath of its president, affirmed the completion, "as required by the act," of each and every section of the whole road; and the fact of such completion having been ascertained and declared in the way prescribed and agreed upon; and the claimant having demanded and received the full benefit in lands and bonds of such completion for each and every section of the road, it is not competent for it now to deny or question, except for fraud, the fact of the completion of the entire road; but it is absolutely estopped from so doing.

The only escape from these conclusions is, that the completion referred to in section 6 is a different thing from the completion referred to in sections 4 and 5. This is, in effect, the view urged by the claimant, as showing that the completion did not exist, for the purpose of taking money from it, until about five years after it had existed for the purpose of its demanding and receiving lands and bonds. Of course, if the act was so framed as to require this extraordinary interpretation, it must be so interpreted; but such a meaning is not to be ascribed, unless the language leaves no escape from it.

No intelligent and unbiased reader of those sections would suppose that they were intended to require two completions. There can be no such thing as two completions of any piece of work. There may be different degrees and different stages of completion, but when completion is reached, that is the end.

And yet the claimant insists that two completions were there authorized. And singularly enough, as the act is viewed by the claimant, each completion was to inure to its benefit, and each to operate adversely to the *defendants*. That is to say, to enable the claimant to get

lands and bonds, the road was completed in 1869; but to entitle the government to the 5 per cent. of the net earnings, the road was not complete till 1874. It seems to us impossible that any such one-sided absurdity could have been intended. The completion referred to in the sections above set forth was *one*. In section 4 it is a completion by sections; in section 6 a completion of the aggregate of all the sections.

The sole answer to this attempted by the claimant is, that to the President of the United States was confided by law the supervision of the construction of the road, and that he never formally ascertained and determined that the road was finally completed until November, 1874, when he determined that it was completed on the 1st of October, 1874.

There is nothing in this position, unless it be shown that the law devolved on the President the duty of ascertaining and determining when the road was "*finally* completed." No such duty was imposed on him. In fact, the law did not raise the question of *final* completion of the road. The statute nowhere uses the word *final* or *finally* in that connection. Had it done so, the case would have been involved in greater difficulty than it is; for it would have been almost impossible to decide when the point of *final* completion had been reached; that is, the point at which nothing more could be done to bring the road up to the highest state of completeness that the intellect and knowledge and skill of man could devise. The language of the act which was to be applied, and was in fact applied, by sections to every foot of the road from its eastern to its western terminus was as follows:

> Whenever said company shall have completed twenty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turn-outs, watering-places, depots, equipments, furniture, and all other appurtenances of a first-class railroad, * * * the President of the United States shall appoint three commissioners to examine and report to him in relation thereto; and if it shall appear to him that twenty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company on each side of the road, as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each twenty miles of said railroad and telegraph line are completed upon certificate of said commissioners. * * * For the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of twenty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds, &c.

Now, the claimant practically insists that the road was not to be considered as having reached completion within the meaning of this language until it had reached *completeness;* but this was not, in our opinion, the intent of the law. The act does not require an entirely complete first-class railroad, but a railroad "completed and equipped in all respects *as required by this act*."

And what constituted such a road? Changing the collocation of the clauses, but not in the least changing the meaning, the requirements of the act were simply these and no more: 1, That the road should be "supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turn-outs, watering-places, depots, equipments, furniture, and all other appurtenances of a first-class railroad"; and, 2, That the road should be "ready for the service contemplated by this act"; which service, as stated in section 3, "was the safe and speedy transportation of the mails, troops, munitions of war, and public stores."

It seems to us clear that this language did not require the sections of the road, when examined, to be in the highest condition of completeness attainable in a first-class railroad, but only in such state of com-

pletion, in the particulars above recited, *as to be ready for the service contemplated by the act.* If we had any doubt on this point, it would be removed by the language of the *proviso* to the fourth section, requiring an oath to be made by the president of the claimant in order to obtain the appointment of commissioners to examine and report upon a section of the road. That officer was required to swear, not that the section had reached completeness, but that it had been "*completed in the manner required by the act.*"

If this view be correct, then it is undeniably true that every mile of the road was found and reported by commissioners appointed as prescribed in the act, to have been completed and equipped as a first-class railroad, and ready for service, and that the President of the United States acted upon every one of their reports, and ordered patents for lands and bonds to be unconditionally issued to the claimant for each section of the road as so reported.

And here, in our judgment, ended the authority of the President in the matter. There is not, as we consider, the least ground for claiming that the supervision of the construction of the road was confided to him by law. Nor is there any ground for claiming that he was authorized to ascertain and determine whether the road was *finally* completed. His whole authority was, 1, To appoint commissioners to make report to him; and 2, When they reported, to say whether it appeared to him that twenty consecutive miles of the road had been "completed and equipped in all respects as required by this act." When he performed those two duties his functions were ended. And when the commissioners made report to him that the westernmost and last section of the road was so completed and equipped, and he signified that it so appeared to him, then the whole road was, within the meaning and for the purposes of the act, a completed road; and nothing which the President might afterward say or do could have effect in law to make it otherwise. It is upon the President's further action in the premises, now to be considered, that the claimant bases its demand for the fixation of October 1, 1874, as the day of the completion of the road.

On the 9th of February, 1869, the Secretary of the Interior laid before the President the report of the commissioners upon the two sections, of twenty miles each, "commencing at the 960th and terminating at the 1,000th mile-post, west of the initial point on the Missouri River near Omaha"; the latter mile-post being only $38\frac{68}{100}$ miles from the western terminus of claimant's road, as ultimately established.

The report represented those sections as "ready for present service, and completed and equipped as a first-class railroad"; and the Secretary of the Interior recommended "the acceptance of the same, and the issue to said company of bonds and of patents for lands due on account of said sections." The President, on the same 9th of February, 1869, indorsed on the Secretary's letter these words: "The within recommendations of the Secretary of the Interior are approved; and the Secretary of the Treasury and himself are hereby directed to carry the same into effect."

This was exactly what had been done in the case of each previously-examined section of the road, except some of the first, which were reported as in some respects deficient, but the defects were afterward remedied. Therefore, on that 9th of February, 1869, it was a fact, undisputed and indisputable, that one thousand miles of the claimant's road had been reported upon by commissioners, and accepted by the President of the United States, as "ready for present service, and completed and equipped as a first-class railroad." This was all that the statute required to entitle the claimant to the benefits resulting from

the construction of its road. There the claimant was lawfully entitled to rest, and demand and receive all those benefits.

But the claimant chose not to rest there; but, three days after all its rights up to the 1,000th mile-post had been settled and fixed in the manner prescribed by law, it engaged in a transaction which has so important a bearing on this case that special notice must be taken of it; for out of it springs, and upon it rests, the claimant's demand upon the court to fix the 1st of October, 1874, as the date of the completion of the road, from and after which the claimant was bound, if bound at all, to apply 5 per cent. of its net earnings to the payment of the bonds issued to it.

This was the transaction: On the 12th of February, 1869, when only 38.68 miles of its road remained to be constructed, the claimant signed two written declarations and agreements which, in effect, formally admitted and declared that its road up to the 1,000th mile-post had never been completed and equipped as a first-class railroad, and, therefore, that the previous reports of the commissioners were false. The first of those writings agreed that $3,000,000 of its first-mortgage bonds should be deposited with the defendants "as security for the completion of the structure and equipment of the road, according to the provisions of the Statutes of the United States, providing for the building and completion of said road and its equipments"; and that the bonds so deposited should be held by the Treasury Department "until the President of the United States, on a proper examination of the actual completed road and equipments, shall be satisfied that the same are so completed as a first-class railroad according to law." The second of those writings "as a further security to the same end," agreed that "the lands given to the company by the acts of Congress" should "remain without patents being taken out therefor until the President of the United States, upon a proper examination of the actual condition of the road, its structure and equipments, shall be satisfied that the same have been completed according to law."

It appears that the claimant was required by the Attorney-General of the United States to execute those papers "as a guarantee for the *ultimate full* completion and equipment of its road"; and that fact is relied on as giving force and efficacy to the proceeding. However desirable it may have been that the road should be brought to a higher degree of completeness than that contemplated and required by the act, we were not referred to any statute which made the question of its completion dependent on the judgment or action of the Attorney-General, or vested him with any control over the action of the claimant in the premises. Hence when the claimant, in pursuance of his requirement, executed those papers, its act in so doing was purely voluntary. Not only so, but the execution of those papers was directly in the claimant's interest, and against that of the defendants. It was, on the one hand, the interest of the government to begin, as soon as it lawfully could, the application of the 5 per cent. of the net earnings of the road to the payment of its bonds; while, on the other hand, it was the interest of the claimant to postpone to the latest possible day the payment of the 5 per cent., amounting the first year after the completion of the road to more than $135,000, and regularly increasing until, in the fifth year, it grew to more than $345,000. Whether the claimant was prompted by this large pecuniary interest to sign those papers does not appear by direct proof; but presumably it understood its interest, and saw that through the operation of those papers the time of the beginning of the 5 per cent. payment might be postponed, and well knew that every day's postponement was for its direct and large benefit. In point of fact, it was so.

until the 18th of November, 1874, that the President formally terminated the suspension of patents and ordered the issue of them for all the lands to which the claimant had become entitled. And it is claimed that *this* action of the President was decisive of the question of the completion of the road, and of the time when the computation of the 5 per cent. payment should begin. This position, in our judgment, cannot be maintained, for the following reasons:

1. The time of the completion of the road was to be determined in the way prescribed in the claimant's charter, and in that way alone.

2. It was, therefore, wholly incompetent for the claimant, by its own sole act, to prescribe or authorize some other way to that end.

3. The papers in question were no agreement on the part of the government to submit the question of the time of completion of the road to the decision of the President, but only a voluntary agreement to that effect on the part of the claimant.

4. That agreement of the claimant did not and could not have, in law, any effect whatever to vest a power in the President which was not vested in him by law.

5. Therefore, when the President, in 1874, undertook to declare the completion of the road, he simply performed an act which, so far as it was adverse to the United States, was without legal authority, and therefore void.

6. Hence, if the declaration of the President, in 1874, fixed the time of the completion of the road at a later day than that at which it had before been fixed in the way prescribed by the act, then that declaration was wholly destitute of legal effect, as against the United States.

This brings us directly to the great controlling point of the case, namely, When was the road completed and equipped, within the meaning of the act? In the light of the views previously expressed there is but one answer to this, and that is, that when the last section of the road was reported by the commissioners, and accepted by the President, as completed, then the Union Pacific Railroad was completed within the meaning of the act.

When that last report was made, the legal question was not whether the road was then up to the condition of "ultimate full completion," or to that of "ultimate completion," whatever either phrase might be held to mean, but whether it had been "completed and equipped *as required by the act*" to entitle the claimant to lands and bonds. When reported as having attained *that* condition of completion, and the report was accepted by the President, the question of completion was finally settled and determined, unless it could be impeached for fraud.

Applying these views, we consider that the road was completed, as a whole, within the meaning of the act, on the 15th of July, 1869; for on that day the President of the United States accepted the report of the commissioners on the westernmost and last section of the road, which report represented it "as ready for present service, and completed and equipped as a first-class railroad."

Nevertheless, we are of opinion that that date should not be adopted as the basis of the judgment of the court for reasons now to be stated.

On the 10th of April, 1869 (16 Stat. L., 56), Congress passed a joint resolution, the second section of which is as follows:

SEC. 2. That, to ascertain the condition of the Union Pacific Railroad and the Central Pacific Railroad, the President of the United States is authorized to appoint a board of eminent citizens, not exceeding five in number, and who shall not be interested in either road, to examine and report upon the condition of, and what sum or sums, if any, will be required to complete each of said roads, for the entire length thereof, to the said terminus as a first-class railroad, in compliance with the several acts relating to said roads. * * *

In pursuance of that provision five commissioners were appointed, who examined the roads, and, on the 30th of October, 1869, made report thereon, which is given in full in the finding of facts, and from which we extract the following two paragraphs:

In the opinion of the commission, the requirements of the law will be satisfied, and the designs of Congress carried out, if the roads be properly located, with judicious grades; have substantial road-beds of good width; ballasting which, with proper care, shall be able to keep the track in good condition throughout the year; permanent structures for crossing streams, good cross-ties, iron and joint fastenings; sufficient sidings, water-tanks, buildings, machinery, and adequate rolling-stock—the more important machine-shops and engine-houses being of masonry—and the commission is glad to be able to say that, in its opinion, while some expenditures still need to be made, these two roads are substantially such roads to-day. The expenditures needed for completion will be given in detail for each road.

This great line, the value of which to the country is inestimable, and in which every citizen should feel a pride, has been built in about half the time allowed by Congress and is now a good and reliable means of communication between Omaha and Sacramento, well equipped, and fully prepared to carry passengers and freight with safety and dispatch, comparing in this respect favorably with a majority of the first-class roads in the United States.

The report, nevertheless, estimated that an expenditure of $1,586,100 would be necessary for the completion of the Union Pacific Railroad.

Notwithstanding that estimate, the Secretary of the Treasury, on the 6th of November, 1869, ordered the issue of subsidy bonds due to the claimant on the westernmost and last section of the road; and in the presentation of this case the government has treated that day as the one from which, for the purposes of the case, the completion of the road should be dated. We, therefore, hold that to be the day of the completion.

It remains to ascertain whether, after that day, there were net earnings of the road, and, if so, what amount.

In deciding what are net earnings, we take: 1. The gross receipts of the claimant from operating its road and telegraph line; and 2. The gross receipts from the rent of buildings, or parts of buildings belonging to the road; and from the aggregate of those two items we deduct the expenses of operating the road and line to earn the first description of receipts; and the remainder constitutes the net earnings.

The Supreme Court of the United States, having, in Union Pacific Railroad Company *vs.* Hall (91 U. S. R., 343), decided that the bridge constructed by the claimant over the Missouri River at Omaha is a part of its road, the receipts therefrom and the expenses of operating it are brought into our computation hereinafter set forth.

In ascertaining the expenses of the road, we exclude all amounts paid on construction account, because the claimant is not, in our view, entitled to charge them against earnings until it shows that its construction fund was exhausted; and no attempt was made to show that. On the contrary, it must, as we conceive, be certain that that fund has not yet been exhausted.

The claimant's construction fund consisted of four items, viz: 1. Capital stock; 2. First-mortgage bonds; 3. United States bonds; and 4. Lands received from the United States.

From Senate Report No. 111, Forty-fifth Congress, second session, we ascertain that the amounts of the first three of these items were as follows:

| | |
|---|---|
| 1. Capital stock paid in | $36,762,[illegible] |
| 2. First-mortgage bonds | 27,232,[illegible] |
| 3. United States bonds | 27,236,512 |
| Total | [illegible] |

In addition to this sum the land-grant to the claimant was about 12,000,000 acres, of which, up to July 1, 1874, only 3,445,781 acres had been patented to the claimant, leaving nearly three-fourths of the entire grant not then fully available for any purpose of expenditure, and, therefore, certainly not used in construction.

But of the quantity patented the claimant had, up to that date, sold only 1,013,774 acres, leaving nearly 11,000,000 acres not yet, at that time, used for any purpose of construction.

As the claimant's demand comes down only to December 31, 1875, we deem ourselves justified in holding that on that day there must have been millions of acres of those lands still undisposed of by the claimant, the proceeds of the sales of which would more than suffice to meet all accruing outlays for construction. While that condition existed, we are clear in the opinion that the claimant had no legal right to charge any construction expense whatever against its gross earnings, so as thereby to diminish the amount of earnings out of which it should apply 5 per cent. toward payment of the bonds of the government.

In ascertaining the expenses, there is another very large item of the claimant's expenditures which we do not consider properly chargeable against its earnings, namely, interest paid on its floating and bonded debt. This cannot, in our judgment, be regarded as an expense of operating the road.

On the same ground we disallow the following items:

1. Expenses of land and town-lot department.
2. Taxes on lands and town lots.
3. Premiums on gold to pay coupons.
4. Requirements of sinking-funds.
5. Premiums on Omaha Bridge bonds redeemed.

In ascertaining the gross earnings of the road, we rest primarily upon the table of earnings set forth in finding XVIII, with the following deductions:

1. Fifteen per cent. from item 7 in each year.
2. From item 12, in the year 1869–'70 the sum of $23,400, being dividends from stock of Pullman Pacific Car Company, as set forth in the second table of earnings in finding XVIII.

In ascertaining the expenses, we take the table of expenses set forth in that finding, and make deductions therefrom as hereinafter indicated.

Having thus stated our views of what legitimately constitute earnings and expenses, we tabulate the result, year by year, from November 6, 1869, to November 5, 1875, both inclusive, as follows:

| | | | |
|---|---|---|---|
| 1869–'70: | | | |
| Gross earnings, as per findings | | | $8,125,212 40 |
| Deduct therefrom— | | | |
| 15 per cent. of item 7 | | $72,358 00 | |
| Pullman car dividends in item 12 | | 23,400 00 | |
| | | | 95,758 12 |
| Actual gross earnings | | | 8,029,454 28 |
| Total expenditures, as per findings | | 10,287,954 25 | |
| Deduct therefrom— | | | |
| Printing bonds in item 13 | $10,339 76 | | |
| Items 17 to 30, inclusive | 4,951,848 52 | | |
| | | 4,962,188 28 | |
| | | | 5,325,765 97 |
| Net earnings for the year | | | 2,703,688 31 |

| | | | |
|---|---|---|---|
| 1870–'71: | | | |
| Gross earnings, as per findings | | | $7,563,006 59 |
| Deduct 15 per cent. of item 7 | | | 54,321 68 |
| Actual gross earnings | | | 7,508,684 91 |
| Total expenditures, as per findings | | $7,942,755 88 | |
| Deduct therefrom— | | | |
| Printing bonds in item 13 | 1,500 00 | | |
| Items 17 to 30, inclusive | 4,245,440 96 | | |
| | | 4,246,940 96 | |
| | | | 3,695,814 92 |
| Net earnings for the year | | | 3,812,869 99 |
| 1871–'72: | | | |
| Gross earnings, as per findings | | | 8,659,031 66 |
| Deduct therefrom 15 per cent. of item 7 | | | 60,538 78 |
| Actual gross earnings | | | 8,598,492 88 |
| Total expenditures, as per findings | | 9,572,784 15 | |
| Deduct therefrom items 17 to 30, inclusive | | 4,671,634 66 | |
| | | | 4,901,149 49 |
| Net earnings for the year | | | 3,697,343 39 |
| 1872–'73: | | | |
| Gross earnings, as per findings | | | 10,666,117 26 |
| Deduct therefrom 15 per cent. of item 7 | | | 69,860 10 |
| Actual gross earnings | | | 10,596,257 16 |
| Total expenditures, as per findings | | 9,968,854 70 | |
| Deduct therefrom— | | | |
| New stations in item 1 | 6,909 98 | | |
| Items 17 to 30, inclusive | 4,642,866 86 | | |
| | | 4,649,776 84 | |
| | | | 5,319,077 86 |
| Net earnings for the year | | | 5,277,179 30 |
| 1873–'74: | | | |
| Gross earnings, as per findings | | | 10,834,651 49 |
| Deduct therefrom 15 per cent. of item 7 | | | 76,004 77 |
| Actual gross earnings | | | 10,758,646 72 |
| Total expenditures, as per findings | | 9,809,105 08 | |
| Deduct therefrom— | | | |
| Tenements and new stations in item 1 | 19,806 73 | | |
| Engines, &c., in item 2 | 26,133 68 | | |
| Cars from item 3 | 3,600 00 | | |
| Laramie rolling-mills in item 4 | 43,716 01 | | |
| Printing bonds in item 13 | 6,579 10 | | |
| Items 17 to 30, inclusive | 4,593,404 03 | | |
| | | 4,693,239 55 | |
| | | | 5,115,865 53 |
| Net earnings for the year | | | 5,642,781 19 |
| 1874–'75: | | | |
| Gross earnings, as per findings | | | 12,481,204 48 |
| Deduct therefrom 15 per cent. of item 7 | | | 98,646 28 |
| Actual gross earnings | | | 12,382,558 20 |
| Total expenditures, as per findings | | 10,628,208 16 | |
| Deduct therefrom— | | | |
| Tenements and new stations in item 1 | 99,819 10 | | |
| Engines, &c., in item 2 | 75,727 83 | | |
| Cars, &c., in item 3 | 206,930 36 | | |
| Laramie mills, item 4 | 149,859 30 | | |
| Items 17 to 30, inclusive | 4,631,496 86 | | |
| | | 5,163,833 45 | |
| | | | 5,464,724 71 |
| Net earnings for the year | | | 6,917,833 49 |

RECAPITULATION.

| | Net earnings. | Five per cent |
|---|---|---|
| Year ending November 5, 1870 | $2,703,688 31 | $135,184 42 |
| Year ending November 5, 1871 | 3,812,869 99 | 190,643 49 |
| Year ending November 5, 1872 | 3,697,343 39 | 184,867 17 |
| Year ending November 5, 1873 | 5,277,179 30 | 263,858 96 |
| Year ending November 5, 1874 | 5,642,781 19 | 282,139 06 |
| Year ending November 5, 1875 | 6,918,183 49 | 345,909 18 |
| | 28,052,045 67 | 1,402,602 28 |

Before declaring the judgment of the court, the question whether the claimant is legally bound to pay interest on the annually accrued 5 per cent. must be considered.

By the act of 1862, the claimant is bound to repay to the defendants the amount of the bonds issued by them to it, together with all interest thereon which shall have been paid by the United States.

Toward providing an accruing fund for such repayment, the act authorizes the government to retain one-half of the compensation earned by the claimant for services to the government; and requires the claimant, in addition thereto, after its road is completed, to pay annually at least 5 per cent. of its net earnings.

In United States *vs.* Union Pacific Railroad Company (91 U. S. R., 72), it was decided by the Supreme Court of the United States that the claimant is bound to pay those bonds and the interest thereon only at the maturity of the bonds, *thirty years after their date.*

Whatever, therefore, of compensation for services rendered might be retained by the government, or of 5 per cent. of net earnings might be paid to the government, is to be applied, not *in præsenti*, but to be held for application at the maturity of the bonds toward the payment of the principal and interest thereof.

As the act does not require the government to allow the claimant interest on the compensation retained by it, nor require the claimant to pay interest on the 5 per cent. of net earnings from the expiration of each year in which they accrued, we are of the opinion that it was not the intention of the legislature to require the payment of interest on either side; and therefore that no interest should be allowed against the claimant on the counter-claim.

The defendants, therefore, can recover only the 5 per cent. accrued, as above stated, viz, $1,402,602.28, less one-half of the amount of compensation for services rendered by the claimant, viz, $593,627.10; and for the balance of $808,975.18 judgment will be rendered in favor of the defendants.

DAVIS, J.:

I acquiesce in this judgment, in order to put the case in a shape to be taken to the appellate court, which both parties desire to have done. I agree in the disposition of the principal question at issue, but for different reasons from those expressed by the Chief Justice. I dissent from the conclusions of my associates on minor points, which involve in the aggregate large sums of money. The magnitude of the amounts at stake justifies an endeavor to state, as clearly as I am able, the points of difference, and the reasons for my opinions on the whole case.

The United States hold a double relation toward the Union Pacific Railroad Company. On the one hand, as its sovereign, they are the fountain of its corporate franchises; on the other hand, as a great landowner, they have contracted with it for the construction of a first-class railroad between two widely-separated points of their territory. This suit *concerns only their relations* as contractor.

The provisions of the contract are few and simple. They may be found in the acts of July 1, 1862, and July 2, 1864, enacted by the defendant and both formally accepted by the claimants.

The claimants agreed to construct a first-class railroad and a telegraph for a distance which was subsequently ascertained to be 1,038.68 miles, the work to be done in sections, and the whole to be completed before July 1, 1874.

The defendant agreed, as each section was completed and accepted in a manner to be hereafter more particularly set forth, to deliver to the claimants patents for a certain quantity of land, and also its own bonds for specified amounts: the lands to be the claimants' property; the bonds to be a loan of credit, to be redeemed by the claimants.

The claimants agreed that one-half of the revenue derived from service for the defendant should be applied to the redemption of such bonds and interest; and also that after completion of the road, five per cent. of its net earnings should be annually applied to the same object. They further agreed to transmit dispatches and transport mails, troops, munitions of war, supplies, and public stores for the defendants whenever requested, and always to give the government preference in service.

The issue and delivery of the subsidy-bonds were to constitute *ipso facto* a mortgage on the railroad and telegraph; but the claimants were to be at liberty to make a first mortgage on their road to an amount equal to the proposed subsidy-bonds, and to be issued in like manner as sections of the road should be completed; and the statutory mortgage and the lien of the United States bonds were to be subordinate to the said first mortgage, except as to the provisions relating to the transmission of dispatches and the transport of mails, troops, munitions of war, supplies, and public stores.

Under this contract work was begun in the autumn of 1865. The President accepted the first section with deficiencies of construction, which the company bound itself to remedy. He ordered the subsidies of both kinds to issue without waiting till the deficiencies should be supplied.

A board of experts had been organized in order to secure a uniform standard of construction for adoption as sections should be presented for acceptance. Before the second section was presented this board made its report, recommending that sections should be accepted in many respects incomplete, as measured by the statutory standard of a first-class railroad, and that the sections should be brought up to standard after acceptance. The President approved the report, and ordered directors and commissioners to guide themselves by it as a standard in directing or accepting work.

The various acts and measures which made the present contention possible grew out of this report and of the action of the President upon it. The course which it advised, and which was approved and followed until the whole road was open for traffic, is now assailed as a violation of law.

If the proceedings had any warrant in the statute, it is to be found in the seventeenth section of the act of 1862, providing for a retention of bonds as a guarantee for completion of the road—a provision repealed in 1864, but showing, so far as it bears on the question, a possible contemplation by Congress that sections would be accepted in an incomplete state. It can at least be said for them that under their operation a first-class railroad was constructed and equipped between the Missouri and the Pacific within three months of the period named in the statute, without weakening the company's statutory obligations to the government.

nsiderations, however, can be urged in the forum of public opin-
properly than in a judicial tribunal, where acts and events are
l by rules of law.

ork went on rapidly after it was once fairly begun. The pro-
st mortgage was executed, and first-mortgage bonds were from
time issued and sold. In September, 1868, twenty-seven sec-
the road, amounting to 760 miles, had been accepted by the
t, and the issue of the subsidies thereon had been ordered.
the work on these accepted sections was far below the require-
the statute. Under these circumstances the opinion of the
-General was taken as to the duties and responsibilities of the
e.

ey-General Evarts answered: "I entertain no doubt that the
procedure was a competent and useful discharge of the execu-
in the premises. * * * But upon the same reasons, and
ance of the same method hitherto followed, I am of the opinion
entirely competent to the Executive * * * to provide for
n of the work in the particulars in which a provisional com-
s of successive sections was accepted, subject to an obligation
art of the companies to make good, as far and as fast as might
needed to be subsequently supplied." In conformity with this
on, the claimants in February, 1869, deposited with the defend-
00,000 of their first-mortgage bonds as security for the comple-
he road according to law, and agreed that all their land-patents
retained for the same purpose. This was done by an instru-
ich I shall have occasion to consider hereafter.

e 10th of the following April, Congress, by joint resolution, au-
the President to appoint a board of eminent citizens to visit
and report what amount would be necessary to secure its com-
ccording to law. They also directed the President, in order
e such completion, to retain subsidy-bonds enough for that pur-
, if that were impracticable, to require the company to return
onds to make, with the unissued bonds, the requisite amount;
th plans were found impracticable, to authorize the Attorney-
to institute a suit to protect the interests of the United States
sure the completion of the road.

e 10th of May, 1869, the last rail was laid, and it became pos-
trains to run over the whole road. On the 13th of the same
sworn certificate by the company's officers of the completion
st section, and also of the road as a whole, was laid before the
t. On the 15th of the following July, he accepted the section
red the issue of the subsidies, but nothing was done by the
ents on this order until November, for reasons which clearly
n the findings of fact.

was a difference between the Central Pacific and the Union
bout the point of junction. Until that difference should be
l, the distribution of the subsidy for a few miles of the through
he one side or the other of the point of junction was uncertain.
retary of the Interior therefore recommended the President to
e the bonds and patents due on account of the last section to
y "after full investigation of the respective claims of the two
es," and to require the company to deposit with the Secretary
reasury the security for the ultimate completion of the road,
ad been recommended in the Secretary's letter of May 27, 1869.
etter the Secretary had designated the first-mortgage bonds of
pany *as the desired security.*

The Secretary's letter of the 27th May, as well as that of July 15, was written after the joint resolution of the 10th April became law. We must therefore suppose that his recommendations were intended to be in harmony with the expressed views of Congress, and we are warranted is assuming that neither the first nor the second modes of obtaining sufficient security were practicable. Instead of resorting to the third mode, and obtaining security as the possible result of a successful lawsuit, the Secretary advised availing of the $1,600,000 first-mortgage bonds already in the government's possession. Before the following November events took place which greatly affected the security which he proposed.

In the first place, the board of eminent citizens reported that constructive work, to the amount of $1,586,100, remained to be done in order to bring the road and equipment to standard. This gave a measure for the amount of security to be taken.

In the next place, the point of junction of the two roads was so far settled that it became apparent that the Union Pacific road would be shortened some forty miles. It resulted from this that there was a large overissue of first-mortgage bonds, and that the bonds deposited with the government as security were valueless.

It was therefore decided that these bonds should be canceled, and that the government should look to the land-patents for security; and it was further decided that one-half the remaining patents would be ample security for the sum named in the report of the board of eminent citizens, and that the other half might be delivered, and an executive order was issued from the Department of the Interior to that effect.

This order continued in force until the autumn of 1874. The claimants repeatedly asked to have it rescinded or modified, but their requests were met by refusals to do so until an examination, to be made at their request, should show that the road and equipment were completed up to the statutory standard.

In the summer of 1874 they asked to have such an examination made. The commissioners appointed for the purpose reported that the deficiencies found in the summer of 1869 had been more than supplied, and that the road was completed as a first-class road on the 1st day of October, 1874. The President thereupon, on the recommendation of the Secretary of the Interior, revoked the order of November, 1869, and directed that the suspended land-patents should be issued.

At the trial each party introduced evidence as to the time of the completion of the road, and each argued at length the bearing of the evidence upon the decision of that question. In my judgment that question was left by statute for the President to decide at the time of the occurrence of the completion. It was not to be settled in the future by evidence *aliunde*. The statute empowered the President to determine section by section, on evidence of a particular and prescribed character, when each was completed, and on each decision he was authorized to issue the land and bond subsidies for the particular section. In practice he accepted incomplete work; but this did not modify the combined operation of the acceptance of the road and of the issue of the subsidies upon the agreement to pay the five per cent. of the net earnings. The statute contemplated that, when the last section should be accepted, and the last subsidies issued, the road would be complete as a money-earning machine, and the obligation to pay the five per cent. of net earnings would begin.

On the other hand, the statutory contract bound the defendant to furnish, or to be ready to furnish, the subsidies, in order to entitle it to

the payment of the 5 per cent. The sequence in which the acts were to be performed shows this. First, the claimants were to construct and equip a section of the road. Next, they were to present it for acceptance. Next, the President, after examination by commissioners, was to decide whether the section was "completed and equipped in all respects as required by the act." Next, the land-patents for the section were to issue from the Interior Department, and the subsidy-bonds from the Treasury. Finally, after these things were done in detail, section by section, 5 per cent. of the net earnings were to be set aside when the road should be completed as a whole. The issue of the last subsidy and the completion of the road were to take place simultaneously, and the obligation to set aside 5 per cent. of the net earnings was not to begin until after the occurrence of these two simultaneous events.

If we quit this solid ground, there is no sure foot-hold for the construction of this contract.

We cannot say that the obligation to pay the 5 per cent. would arise on the completion of the road if no subsidy were furnished, since the payment is intended as a contribution toward the redemption of a portion of the subsidy.

No one contends that it arose when the last rail was laid, on the 10th May, 1869, nor when, on the 13th of May, the president of the company made oath that the road was completed according to law.

If the obligation sprang solely from the President's acceptance of the road, it had no reference to the outstanding amount of the loan subsidy, so long as something was outstanding, and was equally obligatory whether $2,700 or $27,000,000 were issued.

But if it was to spring from the completion of the road, and the concurrent readiness to issue all the promised and unissued subsidy, which is the best construction of the statute, then we must remember that the issue of the land-subsidy was made by law as imperative on the government as the issue of the loan-subsidy. Consequently the expectation of the performance of the defendant's promise respecting both classes of subsidy furnished the moving considerations for the claimant's promise to set aside the 5 per cent., and the government could not, under the statutory contract, enforce upon the company a performance of its agreement to do an act that was to be subsequent in time to the receipt of the subsidies, without showing either a readiness on its own part to deliver all the undelivered subsidies, or a waiver on the part of the company to insist upon their delivery at the time and in the manner provided by the contract.

Now the government on the one hand certainly did not fulfill its original engagements respecting the land-subsidy until October, 1874; but on the other hand we have seen that its failure to do so was caused by the making of a new engagement between it and the company. On the 12th February, 1869, the officers of the latter executed an authorized instrument in which this language was used: "The Union Pacific Railroad Company, having been requested by the Government of the United States * * *, as security for the due completion and equipment of its road * * *, to leave the lands given to the said company by act of Congress * * *, without taking out patents for the same, until the President shall be satisfied, upon proper examination of the road, its structure and equipments, that the same have been completed according to the provisions of law * * *: Now this is to declare that the said company assents to the aforesaid requirements in respect to the lands *given to the said company* as aforesaid."

At a later date the government consented to relinquish one-half of the suspended patents, and to hold the other half only for the performance of the specific work recommended by the board of eminent citizens, constituted under the joint resolution of April 10. In that step there was certainly nothing that weakened the force of the company's consent to the reservation.

The recommendations of the board of eminent citizens contemplated the expenditure of upward of $1,000,000 upon sections which had been accepted, and for which the order for the entire subsidies had been made. These sections were therefore "completed" within the meaning of the term as used in the 6th section of the act of 1862. The obligation to contribute toward the 5 per cent. so soon as the remaining sections should be "completed" had attached to them. Therefore, as to all such sections, the statutory contract was abrogated by mutual consent on the 12th February, 1869, so far as related to the unissued land-patents, and the government became thereafter the custodian of the lands under a new agreement, and for a new purpose.

It is contended that the President had no power to make this new agreement, and that his action in withholding the land-patents under it was illegal and void. I do not think so. The action of President Johnson, in February, 1869, was justified by the condition of the unfinished road at that time; and the subsequent action of President Grant in relinquishing half the patents which were held as security was a compliance in spirit, if not in letter, with the requirements of the joint resolution of Congress of April 10, 1869, and was a wise act of protection to the government, and a liberal act as regarded the company.

We are now in a position to consider the President's action, and to ascertain the day which he fixed as the date of the completion of the road.

There is no dispute about the first 38 sections, 1,000 miles in all. They were accepted, and the order was made for the issue of the subsidies before February 12, 1869, and it was to them that the provisions of that agreement immediately applied.

There remained then only 38.68 miles to be completed, in order to entitle the government to the 5 per cent. We have already seen that the company certified on the 13th May that this section was completed, and that the President on the 15th July accepted it, and ordered the bond-subsidy to be issued. The land-subsidy had been disposed of by the agreement of the previous February.

The President's order to issue the bond-subsidy for this section was to take effect upon the happening of circumstances which were within the claimants' control. The dispute with the Central Pacific Company was theirs, not the government's. The delay which it caused in the issue of the subsidy does not defer the defendant's right to the payment of the 5 per cent. of the net earnings. This accrued on the 15th July, when the President rendered his decision that the road was completed, and ordered the subsidies to issue for it, and when the road consequently was completed in the eye of the law.

In order to ascertain what are the net earnings upon which the computation of the percentage is to be made, we must first settle what are to be taken as gross earnings.

The claimants carry on two distinct branches of business. They are common carriers, and they are large landed proprietors. With the latter branch of their business we are not concerned, since the statute requires the payments to be made out of the net earnings of the road.

Confining ourselves to the former branch, the claimants maintain that

he gross earnings of a corporation comprehend all its gains from the egitimate exercise of all direct and incidental powers conferred upon it y its charter.

A railroad operated in connection with other roads is sure to bring nto its owners' hands moneys belonging to other companies for whom t collects freights at the stations of arrival on its own road, or for whom t sells passenger tickets. Assuming that the word "gains" is used in he claimants' proposition in the sense of receipts on its own account, he statement commands my assent; but it is also true that this par- icular corporation cannot set up against the United States, the grantor f its franchises, that it has corporate gains derived from the exercise f powers not conferred upon it by its charter. Income from tenement ouses, from hotels, from Pullman car-stock, from the rent of engines nd cars, for services performed for other roads, and from investments utside of transportation, but not connected with the other branch of usiness, are to be regarded as ancillary to the claimants' exercise of heir franchises as common carriers, and as necessary to the use of their oad in the unsettled districts which it traverses.

The cost of earning gross earnings must be deducted from them in rder to ascertain what are net earnings. This includes, not only the ctual expenses of transportation, but also general corporate expenses, uch as salaries of officers, wages of employés, taxes, assessments, nsurance, law expenses, losses and damages to persons and property, nd other similar charges, and, above all, the cost of maintaining the oad, the plant, and the entire property, so that at the close of the year hey shall be in as good condition as at the beginning.

The claimants further maintain that interest on loans and obliga- ory contributions to sinking-funds, or to the redemption of the subsidy- ban, are also proper to be deducted.

This proposition confounds two things which are quite distinct in hemselves, the net earnings of the property and the net income of the wners of the property.

Regarding the property as an entity, the moneys which go into its onstruction, whether stock or debt, are to be regarded as capital. Its net arnings (that is, the net earnings of the property, not of the capital nvested in it) are to be ascertained by the rule already laid down. fter they are ascertained, their application depends upon the respective riority of rights of the different classes of capital which went into he construction of the property. Loan capital as creditor has priority ver share capital as debtor and as the owner of the property. So, too, he higher classes of loan capital stand prior in right to the lower lasses. But, though the just claims of loan capital must be satisfied efore share capital can receive anything, it is wrong to say that they ust be satisfied before the net earnings of the property itself can be scertained.

The claimants also contend that the tenth section of the act of 1864 ostpones the payment of the five per cent. until the payment of the rst-mortgage debt and interest. This contention cannot be maintained. t is true that the section referred to recognizes that the United States as a lien upon the property to enforce both the payment of the sub- idy-bonds and the rights reserved by the sixth section of the act of 862. The rights of the defendant to the five per cent. is clearly sub- rdinated by it to the rights of the first-mortgage bondholders. If net arnings will not satisfy first-mortgage interest and the five per cent., he latter must give way to the former. When the principal of the ortgage debt matures, it will be a charge on revenue prior to the five

per cent. But, as between the government and the company, there is no change in the definition of net earnings; no enlargement of the rights of the company; no discharge of the right of the government to claim and receive the five per cent., if it is earned, and if it is not immediately applicable to the extinguishment of mortgage debt or interest.

Some expenditures for "station-buildings," "tenement-houses and hotels," "engine-equipment," "tanks and water-tanks," "new shops and machines," "car-equipment," and "Laramie rolling-mills," are said to be improperly charged to earnings.

Undoubtedly new construction, theoretically, should come from capital. Practically it is often difficult to separate new from old. A station is rebuilt on a larger scale; an iron bridge replaces a wooden bridge; an old car or locomotive is rebuilt; a steel rail is substituted for an iron rail. Many prudent managers think it best not only to make such "construction" as this out of earnings, but even to resort to that source for the increase demanded by the ordinary growth of traffic rather than swell capital account by augmenting the funded debt or shares. Such matters are usually left to the discretion of a board of directors. The expenditures objected to certainly increased the value of the security which the government holds for the ultimate retirement of the loan-subsidy. The organic law of the corporation placed representatives of the government in the direction to guard the interests of the United States.

In the absence of complaint from them I do not think this court should impose upon the company an inflexible rule which is often practically opposed to sound and economical administration.

The items relating to the Omaha bridge are in dispute, and some of them are rejected, in the judgment of the court. The bridge was constructed under authority contained in the ninth section of the act of 1864. The act of 1871 authorized the claimants to contract a mortgage debt for its construction. The mortgage failed to realize enough to meet its cost, and the deficit about ($28,000) was met from earnings. The bridge accounts are now carried into the general operations of the road. Although technically a separate property, the bridge is practically operated as a part of the claimants' road, and is, in fact, necessary to it. If the principles which I have laid down are correct, its receipts should form a part of gross earnings, and the cost of its operation a part of the expenditures to be deducted from gross earnings. The small outlay in its construction not having been objected to by the government directors is to be treated as legitimate. The interest paid on its mortgage is to be treated as the interest on the other funded debt of the company.

Some charges for the printing of corporation bonds were objected to. On the principles laid down they are fairly within the corporate expenses which are chargeable to earnings. On the other hand, sundry contested expenditures for expenses of town lots and taxes on land and town lots are properly held by the court not to be chargeable to the earnings of the road.

The claimants are bound to apply the 5 per cent. of the net earnings of the road annually; that is to say, on the recurring anniversary of the day of the month on which the road was completed. The defendant maintains that the obligation to pay the percentage began on the 6th November, 1869, and makes a rest annually between November 5 and November 6 in the tables which it furnishes. I agree that the defendant can waive the percentage between the 15th July and the 6th November, but I do not agree that the road was completed on the latter

date. We are warranted, on the pleadings in this suit, in giving judgment from and including the 6th November, 1869.

On the principles which I have laid down the respective annual amounts for which the defendants would be entitled to judgments are the following:

| | | |
|---|---|---|
| For the year ending November 5, | 1870 | $94,606 48 |
| | 1871 | 189,942 09 |
| | 1872 | 163,000 32 |
| | 1873 | 258,002 77 |
| | 1874 | 271,871 74 |
| | 1875 | 324,084 15 |
| Total | | 1,301,407 55 |

I agree with my associates that no interest should be allowed on these sums.

It is conceded by the government that at the commencement of this suit the claimants had earned in the transportation of mails, troops, munitions of war, and supplies, and in the transmission of dispatches, $1,187,254.21, none of which has been paid. In this suit the claimants are entitled to recover one-half that amount, $593,627.10. That amount should be deducted from the defendants' counter-claim, and the defendant, in my opinion, should have judgment for $707,880.45.

This result differs from that reached by my associates by $101,194.73. For reasons already given I surrender my own convictions and I concur in forming the judgment of the court.

45TH CONGRESS,
2d SESSION.

# S. 512.

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1878.

Mr. DORSEY asked and, by unanimous consent obtained leave to bring in the following bill; which was read twice and referred to the Committee on Railroads.

# A BILL

In relation to the Pacific Railroads.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in order to establish a sinking-fund for the purpose of liquidating the claims of the government on account of the bonds advanced under an act of July first, eighteen hundred and sixty-two, and the acts amending the same or supplemental thereto, to the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, the Central Pacific Railroad Company, a corporation organized and existing under the laws of the State of California the successor by consolidation of the said Central Pacific Railroad Company of California and the Western Pacific Railroad Company, may, and it is hereby authorized to, convey and release to the United States six million acres of the lands in the State of Nevada and in the Territory of Utah, which were granted by the third section of the act of Congress approved July first, eighteen hundred and sixty-two, and the amendments aforesaid, to the Centra Pacific Railroad Company of California.

And in order to establish a sinking-fund for the purpose of liquidating the claims of the government on account of the bonds advanced under said act, and the amendments thereto, to the Union Pacific Railroad Company, a corporation created by said act, the said Union Pacific Railroad Company, may, and it is hereby authorized to, convey and release to the United States six million acres of the lands on the main line of its railroad westerly of the one hundred and fourth meridian of longitude in the State of Nebraska and in the Territories of Wyoming and Utah, which were granted to said Union Pacific Railroad Company by the third section of the act of Congress approved July first, eighteen hundred and sixty-two, and the amendments aforesaid.

SEC. 2. That upon said conveyances and releases being executed in due form, and delivered to the Secretary of the Treasury of the United States, by the said companies respectively, he is hereby authorized and directed to carry to the credit of a sinking-fund for each of the said companies so executing said conveyances and releases, the sum of seven millions and a half of dollars, as the consideration of said lands so conveyed and released at the price of one dollar and a quarter an acre.

SEC. 3. That the Secretary of the Treasury is also hereby authorized and directed to carry to the credit of said sink-

ing-fund, for each of said companies, the amount due, or which may be due, the said companies, respectively, for the carriage and transportation of the mails, troops, munitions of war, supplies and publ_c stores, for the government, under the acts aforesaid, up to and including the thirty-first day of December, eighteen hundred and seventy-seven, which, if not amounting at said date to the sum of one million dollars, shall be made up by the respective companies to that sum each; any sum exceeding said one million dollars to be forthwith paid to said companies respectively.

SEC. 4. That the said Central Pacific Railroad Company and the Union Pacific Railroad Company shall each, in proportion to its respective indebtedness to the United States, pay into the Treasury of the United States, either in lawful money or in any bonds or securities of the United States Government, at par, annually, in equal semi-annual installments, on the first day of April and of October in each year, commencing on the first day of October, eighteen hundred and seventy-eight, and concluding with a final and full payment on the first day of October, in the year nineteen hundred and five, such sums as shall be ascertained by the Secretary of the Treasury, in accordance with the provisions of this act, to be necessary and sufficient, with the interest thereon, as hereinafter provided, when added to the other sums to the credit of said sinking-fund, to pay off and extinguish the government bonds advanced as aforesaid to each of said companies (including the bonds issued to the Western Pacific Railroad Company), with six per centum interest thereon from their respective dates up to the first day of October, nineteen hundred and five, aforesaid. Interest on all sums placed to the credit of the sinking-fund shall be credited and added thereto semi-annually at the rate of six per centum per annum: *Provided, however,* That on the failure or refusal of said companies, or either of them, to pay in accordance with the provisions of this act, for the period of six months, then the provisions hereof in regard to the liquidation of said bonds and interest shall thenceforth become inoperative as to such defaulting company, and the rights and powers of the United States in relation thereto, under the acts to which this is amendatory, be in full force and effect, as if this act had not been passed, except as hereinafter provided.

SEC. 5. That the payments so to be made by said companies shall be in lieu of all payments or other requirements from said companies under said act, and the amendments thereto, in relation to the reimbursement to the government of the bonds so issued to said corporations: *Provided, however,* That until the claims of the government for said bonds and interest are fully paid, said companies shall not in any manner be released from their present liabilities to keep the said railroads and telegraph-lines constructed under the acts of Congress aforesaid in repair and use, and to transmit dispatches over said telegraph-lines, and transport mails, troops, munitions of war, supplies, and public stores upon said railroads for the government, whenever required to do so by any department thereof, at fair and reasonable rates of compensation (said rates not to exceed the amounts paid by private parties for the same kind of service), the whole amount of which shall be paid by the government to said companies, on the adjustment of the accounts therefor, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid: And provided also, That all government freight and transportation designed for points between the Missouri River and the Pacific coast, and on said

coast, shall be sent by the said railroads until the aforesaid claims of the government on account of bonds advanced to the said companies respectively are fully paid and satisfied.

SEC. 6. That it shall be the duty of said Central Pacific Railroad Company to provide for and pay the interest on all land-grant bonds issued under its mortgage of October first, eighteen hundred and seventy, payable twenty years from said date, which mortgage covers the first-mentioned lands to be released and conveyed to the government according to the provisions of this act; and it shall be the duty of said Union Pacific Railroad Company to provide for and pay the interest on all land-grant bonds issued under its mortgage of April sixth, eighteen hundred and sixty-seven, payable twenty years from said date, and on all bonds issued under its sinking-fund mortgage of December eighteenth, eighteen hundred and seventy-three, payable September first, eighteen hundred and ninety-three, which mortgages cover the last-mentioned lands to be released and conveyed to the government according to the provisions of this act; and said companies shall also provide and maintain any necessary sinking-funds for the redemption of their respective land-grant and sinking-fund bonds, and shall duly redeem or pay all such bonds at or before the maturity thereof, or shall otherwise discharge said lands from the lien of said mortgages; and whenever and as often as any of the aforesaid lands shall be sold by the government to settlers or otherwise, or patented to actual settlers pursuant to pre-emption, said companies shall respectively pay to the trustees under said land-grant mortgage, or to the trustees under said sinking-fund mortgage, as the case may require, an amount sufficient to release and discharge such lands so sold and patented by the government from all claim under said mortgages against said lands.

SEC. 7. That the mortgage of the government created by the fifth section of the act of July first, eighteen hundred and sixty-two, amended by the act of July second, eighteen hundred and sixty-four, shall not be in any way impaired or released by the operations of this act, until the sinking-fund herein established shall, on the report of the Secretary of the Treasury, fully equal the amount of said mortgage, principal and interest, on the said date of October first, nineteen hundred and five; but said mortgage shall remain in full force and virtue; and, upon the failure of either of said companies to perform the obligations imposed upon them by this act, said mortgage shall be enforced against such defaulting company as if this act had not been passed; the government, however, duly crediting and allowing to the company upon said mortgage all payments which may have been made in part execution of this act, and interest thereon, to be credited and added thereto semi-annually, as hereinbefore provided.

SEC. 8. That each of said companies shall be entitled at any time, in case it becomes necessary for the protection of its credit, to extinguish the lien of the government, or whenever its financial condition will allow, to pay to the government, in lieu of the semi-annual payments provided for in section four of this act, which may then remain to be made before the full payment and extinguishment of the balance of the government claim as aforesaid, the then present value of all such future semi-annual payments, computed according to an interest rate of six per centum per annum; and upon such payment of the present value, the said balance of the government claim shall be discharged without further semi-annual payments. And each of said companies shall also be entitled

to commute at the same rate any of said semi-annual payments herein provided for by the payment of a specific sum equal to the then present value of such of said semi-annual payments so desired to be commuted, but the sum so paid shall not be less than one million dollars at any one time.

SEC. 9. That this act shall take effect upon its acceptance by said railroad companies, or if accepted by only one of said companies, then as to the company so accepting the same, which acceptance shall be filed with the Secretary of the Treasury within four months from the passage of this act, and shall show that said company or said companies have agreed to the same at a meeting of stockholders; and if said companies shall make punctual payment of the sums herein provided for, and perform all the conditions hereof, this act shall be deemed and construed to be a final settlement between the government and the company or companies so performing the same; but in case of failure so to do, Congress may at any time alter, amend, or repeal this act as to such company so making default.

SEC. 10. That all acts and parts of acts inconsistent with this act are hereby repealed.

# INDEX

*To Proceedings on Pacific Railroad Sinking Fund Bills, First Regular Session, Forty-fifth Congress, 1877 and 1878.*

## SENATE.


ALLISON—Remarks, 12; Query, 266, 268, 362; Speech, 505, 506, 507; Query 512, 522.

AYES AND NOES—Adjourning, 418; Adjourning, 511; Blaine's Amendment, 522; Passage Bill, 535.

BAILEY—Remarks, 140; Query, 184, 188; Speech, 202, 210, 212, 213, 214, 215, 216, 217, 218; Remarks, 230, 311; Query, 374.

BAYARD—Query, 183, 229, 230; Speech, 376; Remarks, 435, 436, 437, 438, 439, 440, 457.

BECK—Query, 189, 190, 191, 194, 195; Speech, 220, 229, 230; Remarks, 263.

BLAINE—Query, 262; Remarks, 263, 264, 269, 272, 273; Query, 362, 364, 365, 366, 367, 369; Amendment, 426; Speech, 426, 427, 428, 429, 430, 431, 434, 435, 436, 437, 438, 441, 442; Remarks, 446, 447, 448, 469, 471, 472, 479, 480, 484; Motion, 495; Remarks, 496; Amendment, 497; Remarks, 498, 507, 510, 512, 513; Amendments, 512, 513; Remarks, 514; Query, 523, 528, 529, 533.

BOOTH—Remarks, 281; Speech, 281, 283, 286, 287, 288.

BURNSIDE—Query, 358, 359, 360.

BUTLER—Query, 134.

CAMERON (Angus)—Paired, 531, 535.

CAMERON (J Don)—Paired, 531, 534.

CHAFFEE—Remarks, 281, 290, 291; Substitute, 349; Speech, 342, 351, 352 353, 354, 357, 358, 359, 360, 361; Query, 363; Paired, 531; Remarks 533; Paired, 535.

CHRISTIANCY—Query 26, 27; Speech, 47, 54, 63, 64; Remarks, 86, 87; Query, 91, 92, 93, 100, 101, 106; Query, 124, 185, 188, 189; Remarks, 188, 189; Query, 193, 194, 195, 245, 246, 247, 248, 249, 251, 252, 253; Remarks, 259, 325, 329, 330, 332, 511.

COCKRELL—Remarks, 495, 511.

COKE—Motion, 245, 253.

CONKLING—Query, 351, 352; Remarks, 353, 354, 355, 356, 363, Query, 411; Remarks, 414, 415; Motion, 417, 456; Paired, 531, 534.

DAVIS (David)—Speech, 16; Motion, 456; Remarks, 535.

DAWES Speech, 292, 299, 309, 301, 302, 304, 305, 306, 307, 308, 310, 311, 312, 313, 315, 316; Query, 430; Paired, 531, 535.

DORSEY—Paired, 532; Introduces Sinking Fund Bill, 687.

EATON—Remarks, 109, 188, 323, 367, 391, 415; Speech, 486, 487, 488; Speech; 503, 504, 505; Remarks, 518.

EDMUNDS—Motion, 80; Query, 173, 174, 183, 184, 185, 186, 187, 215, 260, 263; Remarks, 264, 265, 266, 267, 274, 275, 289, 290, 299, 309, 301, 305, 306, 310, 311, 312, 313, 314, 315, 316, 317, 318, 321, 322; Query, 333; Remarks, 335, 336, 498, 409, 410, 422, 423, 431, 434, 448; Motion, 456; Speech, 458, 459, 469, 471, 472, 473, 474, 475, 476; Remarks, 494, 495, 496, 512, 514; Paired, 531; Amendment, 533; Remarks, 534, 535.

EUSTIS—Paired, 522.

FERRY—Remarks, 515, 516.

HAMLIN—Remarks, 220; Paired, 522.

HARRIS—Remarks, 216; Motion, 260, 261; Paired, 532.

HILL—Query, 143; Remarks, 161; Speech, 163, 173, 174, 175, 176, 179, 180, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 193, 194, 195, 199, 200, 201, 210, 212, 213, 214, 215, 216, 217, 246, 247, 248, 249, 251, 252, 253; Query, 286, 287, 288; Remarks, 368, 370, 371, 372, 374, 375, 473, 474, 475; Speech, 498.

HOAR—Query, 25, 37, 38, 42, 43; Remarks, 95, 111, 112; Paired, 522, 535.
HOWE—Motion, 372; Remarks, 431; Speech, 482, 484, 485, 504, 505; Paired, 532.
INGALLS—Remarks, 261; Inquiry, 514.
JONES (J. P.)—Paired, 532.
JOHNSTON—Remarks, 364, 365, 390; Speech, 391; Paired, 532, 535.
KERNAN—Remarks, 374, 375; Speech, 449.
KIRKWOOD—Paired, 532, 535.
MATTHEWS—Report, see Appendix; Speech, 22, 23, 25, 26, 27, 28, 29, 30, 31, 37, 38, 42, 43, 44; Query, 64; Substitute, 162, 291; Remarks, 313; Query, 317, 322; Speech, 323, 325, 329, 330, 332, 333, 335, 336. Remarks, 417, 437, 524, 525.
MAXEY - Query, 145, 146.
MCCREERY—Query, 9.
MCDONALD—Remarks, 124; Speech, 125, 134, 135; Remarks, 498.
MCMILLAN—Paired, 535.
MERRIMON—Remarks, 135; Speech, 136, 139, 141, 142, 143, 146; Query, 229 Remarks, 230, 304, 305.
MITCHELL—Speech, 89, 86, 91, 92, 93, 95, 96, 97, 100, 101, 102, 106, 107, 108, 109, 110, 111; Remarks, 261 Query, 262, 274, 301; Speech, 491, 494, 495; Query, 522, 523, 524; Remarks, 534.
MORGAN—Speech, 67, 68, 77.
MORRILL—Speech, 253; Remarks, 253, 353; Query, 360, 361; Paired, 531, 535.
PADDOCK—Remarks, 289, 290; Query, 391, 412, 417, 507; Remarks, 509, 510, 512, 513, 514, 525.
PATTERSON—Motion, 508; Remarks, 509, 510.
PLUMB—Remarks, 289.
RANSOM—Remarks, 68, 509.
SARGENT—Remarks, 97, 124; Query, 139, 140, 141, 142, 143, 146, 195; Speech 277, 278, 279; Speech, 318, 321; Remarks, 364; Speech, 398, 408, 409 410, 411, 412, 416, 417; Amendment, 417; Speech, 418, 422, 423 Remarks, 439, 456, 457, 458, 459, 476, 496, 510, 512, 533.
SAULSBURY—Remarks, 140; Query, 513; Remarks, 535.
SPENCER—Motion, 322; Remarks, 509, 510, 516.
TELLER—Query, 63; Remarks, 95, 111; Speech, 112, 124; Query, 217, 218; Remarks, 260; Paired, 532, 535.
THURMAN—Introduces Bill, S. 15, (same as his Bill in 44th Congress.) Reports Bill, S. 15, 3, Report, see Appendix; Speech, 6, 9, 12; Remarks, 23; Query, 25; Remarks, 26; Query, 28, 29, 30, 43; Motion, 47; Remarks, 54, 64, 67, 77; Query, 96; Remarks, 97; Query, 100, 101; Remarks, 107, 198, 109, 110, 135, 161, 162; Query, 175, 176, 178, 179, 180, 182, 183; Remarks, 198, 200, 201, 261; Amendment, 261; Remarks, 262, 263, 266, 267, 268, 269, 272, 273, 274, 278, 279; Amendment, 281; Remarks, 283, 288, 289, 290, 291, 306, 307, 308, 318, 322, 325, 351, 352, 353, 354, 355, 356, 357, 358, 361, 362 363, 364, 365, 366, 367, 368, 369, 370, 371, 374, 375, 390, 409, 415, 416, 417, 423, 428, 429, 430, 434, 439, 441, 442, 446, 447, 448, 456, 457, 458, 480, 486, 487, 488, 495, 496, 497, 498, 503, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 518, 519, 522, 523, 524, 525, 528, 529; Motion, 532.
VOORHEES—Speech, 479, 480; Remarks, 515, 518, 519.
WALLACE - Paired, 511.
WHYTE—Queries, 362, 363, 364.
WITHERS—Paired, 532, 535.

## INDEX TO PROCEEDINGS ON SENATE SINKING FUND BILL IN HOUSE OF REPRESENTATIVES.

AYES AND NOES—On Passage, 575.
BEBEE—Remarks, 547, 548, 558, 564, 565.
BELL—Calls for Ayes and Noes, 575.

BILL AS PASSED SENATE—540; Reported to House, 536.
BLAIR—Remarks, 538.
BRIDGES—Question, 564.
BURCHARD—Remarks, 536.
BUTLER—Remarks, 540, 543, 544, 545, 546, 548, 558, 561; Speech, 562, 564, 565.
CALKINS—Remarks, 574.
CARLISLE—Query, 545.
CASWELL—Remarks, 550.
CHALMERS—Introduces Thurman's Bill, April 1, '78, as reported by Senate Judiciary Committee, (printed and called H. R. 4158, Printer's No. 4470.) Same Bill reported from R. R. Committee, (called H. R. 4158, Printer's No. 4797,) 538; Speech, 565. Report H. R. 622, see Appendix.
CONGER—Remarks, 547, 550.
COX (S. S.)—Query, 536; Remarks, 537, 538; Motion, 540; Remarks, 547 548, 549; Speech, 550; Remarks, 556, 558, 565, 566, 571; Motion, 573, 574; Previous Question, 575; Reconsider and table, 577.
CRITTENDEN—Remarks, 561.
DICKEY—Query, 561.
FINLEY—Remarks, 564.
FRYE—Remarks, 548, 549, 573, 574.
GARFIELD—Speech, 557.
HARTIDGE—Motion, 536; Remarks, 549, 556.
HASKELL—Remarks, 547.
HENDEE—Remarks, 536.
HENDERSON—Remarks, 539.
ITNER—Query, 564.
KNOTT—Remarks, 549.
LAPHAM—Remarks, 550.
MCMAHON—Remarks, 549, 550; Speech, 571.
MORRISON—Remarks, 545, 546, 561; Speech, 567.
PAIRS—576, 577.
PHILLIPS—Speech, 556.
PRICE—Remarks, 558; Speech, 558, 559, 573.
SAMPSON—Query, 537; Remarks, 574, 575.
SINKING-FUND LAW—578.
SPRINGER—Speech, 566; Remarks, 571.
STEELE—Remarks, 565.
STENGER—Remarks, 549.
WRIGHT—Remarks, 564.

## INDEX TO PROCEEDINGS IN SENATE, ON KANSAS PACIFIC R. R. SINKING-FUND BILL.

CHRISTIANCY—Remarks, 593, 594.
DAVIS (David)—Remarks, 592.
HOAR—Speech, 591; Remarks, 592, 593.
KERNAN—Remarks, 591.
PADDOCK—Query, 597.
ROLLINS—Remarks, 592.
SARGENT—Remarks, 592.
TELLER—Remarks, 590; Speech, 594, 595, 596, 597.
THURMAN—Reports Bill, 590; Calls up, 590; Remarks, 591, 592, 593, 594; Query, 595; Remarks, 596.

## INDEX TO PROCEEDINGS ON BILL CREATING "AUDITOR OF PACIFIC R. R. ACCOUNTS."

### IN SENATE.

THURMAN—Motion, 583; Has Bill read, 583; Passed, 584.
FOOTNOTE—Remarks, 583

## IN HOUSE REPRESENTATIVES.

AYES AND NOES—586.
BANNING—Query, 586.
BUTLER—Remarks, 586.
CLARK, JR., (J. B.)—Motion, 584; Has Senate Bill read, 585; Remarks, 585, 586.
LAW—588.
PAGE—Query, 585.

---

## INDEX TO PROCEEDINGS—"KANSAS PACIFIC PRO RATA BILL."

## IN SENATE.

BILL PASSED—612.
EATON—Remarks, 606, 608.
COCKRELL—Remarks, 609, 610.
CONKLING—Remarks, 599, 600, 603; Motion, 606; Remarks, 607, 609.
CHAFFEE—Bill and Speech in Appendix.
CHRISTIANCY—Remarks, 600, 606, 611.
DAVIS, (David)—Remarks, 609.
DORSEY—Remarks, 607, 608.
HOAR—Remarks, 610.
HILL—Remarks, 611, 612.
MATTHEWS—Speech, 604, 605.
MERRIMON—Remarks, 609.
MCDONALD—Remarks, 601, 605, 606.
MORRILL—Remarks, 609.
PADDOCK—Remarks, 599, 602, 607; Query, 610, 611; Amendment, 612.
ROLLINS—Remarks, 601, 611, 612.
SAUNDERS—Motion, 599; Remarks, 607, 609.
TELLER—Query, 602; Remarks, 603; Amendment, 610.
THURMAN—Motion, 598; Remarks, 598, 600, 602, 603, 606, 607, 608, 609, 612.

## IN HOUSE REPRESENTATIVES.

AYES AND NOES—662.
BLAIR—Remarks, 537, 538, 539, 540. Report, see Appendix.
BOUCK—Query, 679.
CANNON—Query, 662.
CHALMERS—Report—H. R. 430, see Appendix.
COLE—Speech, 635.
CRITTENDEN—Query, 537; Remarks, 538; Speech, 639; Motion, 659; Remarks, 661, 662; Calls for Ayes and Noes, 662.
HASKELL—Query, 662.
HEWITT, (G. W.)—Motion, 662.
HOUSE—Remarks, 538.
LUTTRELL—Remarks, 661.
O'NEIL—Remarks, 662.
PAGE—Query, 661.
PAIRS—664.
PATTERSON, (Col.)—Motion, 662.
PRICE—Query, 538; Remarks, 659.
REA—Amendment, 661.
RICE—Makes Report—H. R. 622, see Appendix. Reports Bill, 537; Motion 538; Remarks, 539, 540; Speech, 512; Has Bill read, 659.
SAPH—Query, 662.
SAYLER—Motion, 662.
SENATE BILL, No. 1337—As Passed Senate, 597.

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5TH CONGRESS, 2d Session. } SENATE. { REPORT No. 111.

IN THE SENATE OF THE UNITED STATES.

MARCH 4, 1878.—Ordered to be printed.

Mr. THURMAN, from the Committee on the Judiciary, submitted the following

# REPORT:

[To accompany bill S. 15.]

The Committee on the Judiciary, to whom was referred Senate bill No. 5, entitled "A bill to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph-line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first named act," report the same back with an amendment to strike out all after the enacting clause and insert a substitute for the matter stricken out, and also to strike out the preamble to the bill and insert a substitute therefor.

And now, in support of their views, your committee present the following statement of facts, and their reasons for recommending the adoption of said substitutes.

*Union Pacific.*

| | |
|---|---|
| Capital stock, all paid | $36,762,300 00 |
| Government loan, principal | $27,236,512 00 |
| Interest paid by government on above | 15,969,801 45 |
| | 43,206,313 45 |
| Interest repaid government by half transportation account, and covered into the Treasury | 5,134,327 84 |
| Balance due government January 31, 1878, exclusive of its claim for interest upon the interest it has paid | 38,071,985 61 |
| But the company claims further credits that have not been allowed and some of which are in litigation, to wit: 1,299,652+1,600,000= | 2,899,652 00 |
| Leaving | 35,172,333 61 |

Is the indebtedness to the government, should said further credits be allowed, exclusive of the government's claim for interest upon interest above mentioned.

As to the foregoing see—

Report of Secretary of Interior for 1877, Forty-fifth Congress, second session, Ex. Doc. 1, part 5, vol. 1, pp. xxiv, xxv, xxvii, xxix, xxx.

Public debt statement for January, 1878.

The interest (payable in semi-annual installments) which the government pays annually upon its loan to the company—6 per cent. on $27,236,512—is $1,634,190.72.

The first mortgage of the company, and whose lien is prior to th the government, is for about the same amount as the government and bears the same rate of interest. The annual interest on it is, t fore, about $1,634,190.72. It is stated by the government directors report, *ante*, p. 828) as $1,633,920.

The total funded indebtedness of the company June 30, 1877 Secretary's report, *ante*, xxv), was $78,733,712.

The items of this indebtedness (see manuscript report of the pany to the Secretary for 1877) were as follows:

| | |
|---|---|
| First-mortgage bonds | $27,23 |
| Sinking-fund mortgage bonds | 14,1 |
| Income bonds | |
| Land-grant bonds | 7,3 |
| Omaha bridge bonds | 2,22 |
| Certificates for bonds | 47 |
| United States bonds loaned | 27,23 |
| Total funded debt, including government loan | 78,73 |

The nature of this indebtedness is more fully shown by the report the government directors for 1876 (pamphlet 17), as follows:

*Statement of the funded debt of the company June 30, 1876.*

| Name of bonds. | Amount issued. | Amount redeemed. | Amount outstanding. | Rate of interest. | Coupons payable |
|---|---|---|---|---|---|
| First mortgage | $27,237,000 | $5,000 | $27,232,000 | 6 per cent, gold | January and July |
| Sinking fund | 14,470,000 | 144,000 | 14,326,000 | 8 per cent., currency | March & Septem |
| Income | 9,355,000 | 9,345,000 | 10,000 | 10 per cent., currency | Last coupon Sept. |
| Land-grant | 10,400,000 | 2,889,000 | 7,511,000 | 7 per cent., currency | April and Octobe |
| Omaha bridge | 2,500,000 | 221,000 | 2,279,000 | 8 per cent., gold | Do. |
| Total outstanding | | | 51,358,000 | | |
| United States for 6 per ct. currency bonds | | | 27,236,512 | | |
| Grand total | | | 78,594,512 | | |

"The *floating* debt of the company on August 28, 1876, was $740,153. This includes $82,703.20 of outstanding overdue coupons. Against this the company holds, as cash funds bonds, amount owned by the company June 30, 1876, $1,530,000; United States amount due the company for one-half approved accounts for transportation June 30, 1876, $1,252,505.92, and interests in several railroads in Colorado and Utah more or less directly connected with its line."

In considering the question of the ability of the company to comply with the requirements of the pending bill, as proposed to be amended, the floating debt of the company may be laid out of view, as it is very small, less than $1,000,000, and the available assets of the company are more than sufficient to extinguish it at any moment. The land-grant bonds may also be laid out of view, for the land-grant is sufficient not only to pay the current interest upon them, but also the principal when due, and leave a large surplus to be applied to the other indebtedness of the company. The land grant was about 12,000,000 acres. (See Report No. 440, H. of R., 44th Cong., 1st sess., page 3, note 15.)

And see Report of Government Directors for 1877 (Report of Secretary of the Interior, ante, p. 821), who say:

"The land granted to the company is mortgaged to secure the payment of the land-grant bonds. Number of acres sold, 1,341,779.30; amount due company on contracts, $3,049,134.53. Principal received, $2,618,293.71; interest, $442,681.79; total, $3,060,975. Acres sold during last year, 67,971.53; average price per acre, $2.92.

"In view of the grasshopper scourge which has afflicted Nebraska for several past

past, the number of acres of land sold by the company during the last year is a gratifying surprise, and now that the scourge seems to have passed away, and immigration is again pouring into the State the sales in the future must increase rapidly.

| | |
|---|---|
| The amount of land-grant bonds originally issued was | $10,400,000 00 |
| Amount outstanding June 30, 1877 | 7,374,000 00 |
| Amount retired from sales of land | 3,026,000 00 |

"Undoubtedly the land grant will retire the land-grant bonds, and leave a large surplus over for the extinguishment of other indebtedness of the company."

## RECEIPTS AND OPERATING EXPENSES.

The gross receipts and operating expenses of the company for the last four years were as follows:

| For the year ending— | No. of report. | Gross receipts. | Operating expenses. | Net receipts. |
|---|---|---|---|---|
| June 30, 1874 | 23 | $10,246,760 16 | $5,089,789 17 | $5,156,970 99 |
| June 30, 1875 | 18 | 11,522,021 54 | 5,373,655 87 | 6,048,365 67 |
| June 30, 1876 | 11 | 12,113,990 69 | 5,447,819 27 | 6,666,171 42 |
| June 30, 1877 | 825 | 13,719,343 82 | 5,402,252 24 | 8,317,091 58 |
| | | | | 26,188,599 66 |
| Average annual net receipts | | | | 6,547,149 91 |

The Attorney-General insists that, in ascertaining the 5 per cent. of net profits to which the government is entitled under the charter, nothing but the operating expenses are to be deducted from the gross receipts of the company. On the other hand, the company contends that net earnings are whatever it has left after payment of all its just and lawful obligations, and in support of this position cites St. John *vs.* The Erie Railway Company (22 Wall.). That case merely decides that as between a preferred stockholder, entitled to dividends out of net earnings, and the creditors of a company, there are no net earnings until the creditors are paid, it being a familiar principle that the shareholders of a company cannot lawfully divide its assets or profits among themselves, and thereby leave its creditors unpaid.

But the question in this case is different, and depends upon the charter of the company which is as binding upon its creditors as upon its shareholders, and if that entitles the government, as a preferred creditor, to 5 per cent. upon the gross receipts less the operating expenses, neither shareholders nor other creditors have a right to complain. The right to the 5 per cent. is given by the 6th section of the act of 1862, and, reading that section in connection with the 18th section, we are not prepared to admit the claim of the company. But whatever may be the true interpretation of these sections, we are of the opinion that, under its reserved right to alter, amend, or repeal, it is competent for Congress to define, for the future at least, what shall be deemed to be net earnings. And, in view of the rights of the first-mortgage bondholders, and as a fair adjustment of the conflicting claims of the government and the company, we think it would be right to deduct, in future, not merely the operating expenses, but also the interest on the first mortgage; and the amendment we report is to that effect. As to the past, we leave the question upon the law as it now stands to the decision of the Supreme Court in the case pending before it.

## THE FIVE PER CENT. IN THE FUTURE.

We have seen that, for the four last years, the average annual net income of the company, deducting operating expenses alone from its gross receipts, has been $6,547,149.91. We think that this income will be largely increased in the future by the increasing business of the company, the sales of its lands, and its immense coal-mines. In reference to these mines the Report of the Directors to the Stockholders for 1874, says:

"The Union Pacific Railroad Company own, in Wyoming Territory, an area of coal-fields greater than the entire anthracite-coal fields of the State of Pennsylvania.

"The coal-fields of the company extend along *four hundred miles* of the road, and five million acres of its lands are within the Coal-Measures. The coal is superior for ordinary fuel, and unequaled for making steam, and for all manufacturing purposes.

"It will furnish cheap fuel to the company for its own traffic, and will afford large additional revenues from the sale and transportation of coal for domestic and manufacturing uses, to supply the country extending for nearly two thousand miles—from Omaha to the Pacific coast."

But if we assume that the net earnings of the future will not exceed those of the last four years, and deduct from the average annual earnings of those years, to wit, $6,547,149.91, the annual interest on the first mortgage, namely, $1,633,920, we will have $4,913,229.91 as annual net earnings, 5 per cent. on which would be $245,661, which we think is the very least sum that the government would probably receive annually from this source should the bill we report become a law. Whatever it may be, it will, under the provisions of now existing law, be applicable immediately upon its receipt toward repayment of the interest paid or to be paid by the government on its loan, and this right ought not to be surrendered.

## THE GOVERNMENT TRANSPORTATION ACCOUNT.

By the sixth section of the charter, as amended by section 5 of the act of 1864, one-half of the compensation to which the company may become entitled for services rendered by it for the government is immediately applicable to the payment of the interest and principal of the bonds issued by the government in aid of the company; that is, the government loan. This right of immediate application reimburses the government, *pro tanto*, the interest paid and to be paid on said bonds, and ought not to be surrendered. The aggregate of the whole transportation account for the years 1871 to 1876, inclusive, six years, as stated in the report of the directors to the stockholders for 1876, was $5,055,742.54, an annual average of $842,623.75, one-half of which is $421,311.87.

We think it will not be less in the future. It has been argued before us that owing to the removal of the Indians to the Missouri River it will probably decrease; but, taking all circumstances into view, especially the immense increase that is likely to occur in the mail-service, as population shall increase in the West, it is our opinion that the future annual earnings will exceed those of the past.

From the foregoing data, it is obvious that the company can pay its interest upon all its obligations, and the sums payable by it annually under the law as it now exists, and allow the government to pay the other one-half of the transportation account into the proposed sinking-fund, and can annually pay into the same the further sum of $850,000, and have a surplus left sufficient to pay a dividend annually to its stockholders of 4½ per cent. on the nominal, or 6½ per cent. on the present market-value of their stock. This is shown in detail by the following

table, which includes the entire indebtedness of the company on which it pays interest annually or semi-annually, except its land-grant bonds, which are omitted because the proceeds of the land-grant more than provides for them, as before stated. The small floating debt—less than a million—is also omitted because the company has assets with which to pay it at any time.

| | | |
|---|---|---|
| Average annual gross receipts, less operating expenses, as *ante* | | $6,547,149 91 |
| Deduct interest on first mortgage | $1,633,920 00 | |
| Five per cent. on net earnings, payable to government under existing law, say | 245,661 00 | |
| One-half transportation, payable to government under existing law, say | 4.1,311 87 | |
| Interest on company's sinking-fund bonds, 8 per cent. on $14,326,000 | 1,146,080 00 | |
| Interest on income-bonds, 10 per cent. on $10,000 | 1,000 00 | |
| Interest on Omaha bridge bonds, 8 per cent. on $2,279,000. | 182,320 00 | |
| One-half transportation account to be paid into the sinking-fund as per bill | 421,311 87 | |
| Further sum to be paid to same as per bill | 850,000 00 | |
| | | 4,901,604 74 |
| Leaving for dividends among stockholders | | 1,645,545 17 |

Being about 4½ per cent. on the nominal amount of the stock, or 6½ per per cent. on its present market-value.

From the foregoing it will be seen that the amount the company will have to pay annually to the government and the sinking-fund, should the bill we report become a law, will be about as follows:

| | | |
|---|---|---|
| Five per cent. of net earnings payable under existing law | | $245,661 00 |
| One-half transportation-account, payable under existing law | | 421,311 00 |
| | | 666,972 00 |
| Into the sinking-fund: | | |
| One-half transportation-account, say | $421,311 00 | |
| Cash | 850,000 00 | |
| | | 1,271,311 00 |
| Total | | 1,938,283 00 |

As the annual interest payable by the government is $1,634,190.72, the above sum would provide only $304,092 annually for the payment of the principal of the government loan.

## CENTRAL PACIFIC.

"This company embraces, by consolidation (besides the original Central Pacific Company), the Western Pacific, the California and Oregon, the San Francisco, Oakland and Alameda, and the San Joaquin Valley Companies."—Report of Secretary of Interior for 1877, p. xxv.

Three of these roads, the original Central Pacific, the Western Pacific, and the California and Oregon, whose aggregate length is about 1,027 miles, have received subsidies from the government, the last-named in lands. The other roads, whose aggregate length is about 187 miles, have not directly received such subsidies.

It has been suggested that in ascertaining the 5 per cent. of net earnings to which the government is entitled under the charter, the earnings of the non-subsidized roads are not to be taken into account. Such was not the view taken by the company in 1872. In the report of the directors to the stockholders for that year the directors said (page 12):

Since the construction of your road to a junction with the Union Pacific at Ogden, there has been added to it by construction and consolidation 480 miles, viz: Western division, 141 miles; Oregon division, 152 miles San Joaquin, 146 miles; San José, 18

miles; Alameda, 17 miles; Oakland, 6 miles. All these additions to the main line have proven at once profitable investments, adding to and with themselves increasing the pro-rata earnings and net income of each mile of the whole.

And treating of the "relations of your road to the government" and referring to the additions above mentioned, they said (page 15):

All the additions are consolidated with the main line and are equally with it security to the government for its loan, and these additions are and will ever be more valuable per mile than the greater part of the main line.

This view is, perhaps, in some degree supported by the decision of the Supreme Court in St. John *vs.* The Erie Railway Company hereinbefore cited; but we do not feel called upon to express an opinion upon it. For whether it is correct or whether the earnings of the subsidized roads alone are to be taken into account, the company will be able, without difficulty, to comply with the provisions of the bill herewith reported.

| | |
|---|---|
| The capital stock of the company paid in is (report of Secretary of Interior for 1877, p. xxv) | $54,275,500 00 |
| The government loan is— | |
| To Central Pacific | 25,885,120 00 |
| To Western Pacific | 1,970,560 00 |
| | 27,855,680 00 |
| Interest paid by United States to October 31, 1877, on Central Pacific loan, and not reimbursed | 12,519,447 11 |
| Interest paid by United States to October 31, 1877, on Western Pacific loan, and not reimbursed | 988,891 54 |
| Total, October 31, 1877 | 41,364,018 65 |

(Report of Secretary, *supra*, p. xxix.)

This is exclusive of a claim by the government for interest upon the interest it has paid.

The government pays (in semi-annual installments) interest on its subsidy bonds amounting annually to 6 per cent. on $27,885,680=$1,671,340.80.

Under the power conferred by the charter the company has issued first-mortgage bonds, whose lien is paramount to that of the United States to about the same amount, and bearing the same rate of interest.

The funded debt of the company, according to the report of the directors to the stockholders for 1876 (the last report we have been able to obtain), was, on December 31, 1876, as follows:

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Convertible mortgage | ..... | Dec. | 1, 1862 | $1,500,000 | $1,483,000 | Jan. | 1, 1883 | 7 per cent. | January and July... | Sinking-fund commencing 1863; $35,000 yearly. |
| California State aid | ..... | July | 1, 1864 | 1,500,000 | 1,500,000 | July | 1, 1884 | ....do .... | ....do ..... | Interest payable by State of California, sinking-fund commencing 1870; $50,000 yearly. |
| Central Pacific, first mortgage | A | July | 1, 1865 | 3,000,000 | 2,995,000 | July | 1, 1895 | 6 per cent. | ....do ..... | A, B, C, D, sinking-fund commencing 1870; $50,000 yearly. |
| Do | B | July | 1, 1866 | 1,000,000 | 1,000,000 | July | 1, 1896 | ....do ..... | ....do ..... | |
| Do | C | July | 1, 1866 | 1,000,000 | 1,000,000 | July | 1, 1896 | ....do ..... | ....do ..... | |
| Do | D | July | 1, 1866 | 1,390,000 | 1,383,000 | July | 1, 1896 | ....do ..... | ....do ..... | |
| Do | E | Jan. | 1, 1867 | 4,000,000 | 3,997,000 | Jan. | 1, 1897 | ....do ..... | ....do ..... | E, F, G, H, I, sinking-fund commencing 1872; $50,000 yearly. |
| Do | F | Jan. | 1, 1868 | 4,000,000 | 3,999,000 | Jan. | 1, 1898 | ....do ..... | ....do ..... | |
| Do | G | Jan. | 1, 1868 | 4,000,000 | 3,999,000 | Jan. | 1, 1898 | ....do ..... | ....do ..... | |
| Do | H | Jan. | 1, 1868 | 4,000,000 | 3,999,000 | Jan. | 1, 1898 | ....do ..... | ....do ..... | |
| Do | I | Jan. | 1, 1868 | 3,525,000 | 3,511,000 | Jan. | 1, 1898 | ....do ..... | ....do ..... | |
| Western Pacific, oldissue | ..... | Dec. | 1, 1865 | ---------- | 112,000 | Dec. | 1, 1895 | ....do ..... | June and December | See note. |
| Western Pacific, first mortgage | A | July | 1, 1869 | 1,970,000 | 1,858,000 | July | 1, 1899 | ....do ..... | January and July.. | Sinking-fund commencing 1876; $25,000 yearly. |
| Do | B | July | 1, 1869 | 765,000 | 765,000 | July | 1, 1899 | ....do ..... | ....do ..... | |
| California and Oregon, first mortgage | A | Jan. | 1, 1868 | 6,000,000 | 6,000,000 | Jan. | 1, 1888 | ....do ..... | ....do ..... | Sinking-fund commencing 1876, $100,000 yearly. |
| Central Pacific, California and Oregon division. | B | Jan. | 1, 1872 | 7,200,000 | 2,000,000 | Jan. | 1, 1892 | ....do ..... | ....do ..... | Do. |
| San Francisco, Oakland and Alameda | ..... | July | 1, 1870 | 1,500,000 | 500,000 | July | 1, 1890 | 8 per cent. | ....do ..... | Sinking-fund commencing 1880; $100,000 yearly. |
| San Joaquin Valley Railroad | ..... | Oct. | 1, 1870 | 6,080,000 | 6,080,000 | Oct. | 1, 1900 | 6 per cent. | April and October... | Sinking-fund commencing 1880; $50,000 yearly. |
| Land-grant | ..... | Oct. | 1, 1870 | 10,000,000 | 9,276,000 | Oct. | 1, 1890 | ....do ..... | ....do ..... | |
| | | | | 62,430,000 | 55,457,000 | | | | | |

NOTE.—One hundred and twelve Western Pacific bonds, "A," are reserved by the company unsold, to take up or exchange for the one hundred and twelve bonds of issue of December 1, 1865, still outstanding.

E. H. MILLER, JR., *Secretary.*

The gross earnings of the road, less the operating expenses, for the years 1872 to 1876, both inclusive, as stated in the reports of the directors to the stockholders, were as follows:

| | |
|---|---|
| 1872 | $6,952,361 73 |
| 1873 | 7,804,681 46 |
| 1874 | 8,342,598 76 |
| 1875 | 9,177,682 09 |
| 1876 | 9,137,004 73 |
| Total for five years | 41,504,328 77 |
| Average annual net receipts | 8,300,965 75 |

If we deduct the interest upon the first-mortgage bonds, as well as the operating expenses, from the gross receipts, the account for said five years would stand as follows:

| | |
|---|---|
| Gross receipts, less operating expenses | $41,504,328 77 |
| Deduct 5 years' interest on first-mortgage bonds, $1,671,340.80×5 | 8,356,704 00 |
| Net earnings for 5 years | 33,148,124 77 |
| Average annual net earnings | $6,629,624 95 |

5 per cent. on which is $331,481.

We think that the net earnings of the road in the future will not be less than they were in the five years above named. In our opinion they will be much greater. We may therefore expect that, if the bill we report shall become a law, and it be held that the earnings of the non-subsidized as well as the subsidized portions of the road are to be taken into account (which is, as we understand, one of the questions now in litigation), the 5 per cent. to be paid to the government in the future, and immediately applicable to reimburse the government, will not be less than the sum aforesaid, $331,481 annually. If the earnings of the non-subsidized portions of the road be omitted, it may not exceed $250,000

## HALF TRANSPORTATION ACCOUNT.

We think that the half transportation account of this company, in the future, immediately applicable to reimburse the government, may be safely estimated at $200,000 per annum. The account in the past warrants this estimate. It is more probable that this estimate is too low than that it is too high.

Estimating the 5 per cent. of net earnings and half the transportation account, in the future, at $500,000, in round numbers, we propose that the other half of the transportation account, say $200,000, shall be paid into the sinking-fund, and that the company be required to pay into the same the further sum of $1,200,000 annually. This would require an annual payment to the government and sinking fund, according to the foregoing estimates, about as follows:

| | | |
|---|---|---|
| 5 per cent. of net earnings, payable under existing law, say | | $300,000 |
| One-half transportation account, payable under existing law, say | | 200,000 |
| | | 500,000 |
| Into the sinking-fund: | | |
| One-half transportation account, say | $200,000 | |
| Cash | 1,200,000 | |
| | | 1,400,000 |
| Total | | 1,900,000 |

Being about the same amount that the bill we report requires of the Union Pacific.

That the company can make these payments and have a surplus sufficient for handsome dividends to its shareholders is easily demonstrated from the facts already stated. But the same thing is shown more concisely by its statements of profit and loss in the directors' reports for 1875 and 1876 to the stockholders.

By the report for 1875 it appears that, after paying all expenses and interest, the company paid to its shareholders dividends amounting to 10 per cent. on the nominal amount of their stock; amount paid, $5,427,550, and it had a surplus of $10,305,953 left.

In 1876, after paying all expenses and interest, it paid dividends amounting to 8 per cent. on the nominal amount of the stock; amount paid, $4,342,040, and had a surplus of $10,265,589.27 left. If we take these two years as a guide for the future—and we think that we may safely do so—the annual amount that will be divided among the shareholders, should no sinking-fund be created, will be 9 per cent. on the nominal value of the stock, $4,883,795.

If the bill we report become a law this amount would be diminished by the amount required to be paid into the sinking-fund, say $1,400,000, leaving $3,483,795, after the payment of all expenses and interest, and the payments into the sinking-fund, to be divided among the shareholders, being $6\frac{4}{10}$ per cent. on the nominal value of their stock.

Even were the earnings of the non-subsidized roads omitted—which in our opinion ought not to be done in estimating the ability of the company to comply with the requirements of the bill—it would still be able to divide from $4\frac{1}{2}$ per cent. to 5 per cent. among its stockholders—a dividend that comparatively few roads in the United States are able to make.

On this subject, see report for 1877 of the Secretary of the Interior, pp. xxxi, xxxii, and xxxiii.

## OTHER ROADS.

The condition of the Central Branch Union Pacific Railroad Company, the Sioux City and Pacific Railroad Company, and the Kansas Pacific Railroad Company, is so different from that of the Union Pacific and Central Pacific, and there being questions peculiar to each of those three companies, we think it advisable to strike the provisions relating to them out of the bill, with a view to report hereafter a bill or bills adapted to their circumstances and the rights of the government.

## THE POWER OF CONGRESS OVER THE SUBJECT.

The bill (S. 15) referred to this committee is the same in its provisions as Senate bill 984, reported by this committee on July 12, 1876. In the report accompanying that bill (44th Cong., 1st Sess., Report No. 459) your committee said:

> Your committee entertain no doubt of the power of Congress to pass this bill.
>
> By the eighteenth section of said act of July 1, 1862, it is declared that—
>
> "The better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act."
>
> It has been said that this is a very limited power to alter or amend the act, and that

the act only authorizes the alteration or amendment in order to promote the construction of the railroad and telegraph line and keeping the same in working order, and to secure to the government at all times (and particularly in time of war) the use and benefits of the same for postal, military, and other purposes. Were this limited interpretation placed on the reservation, it would not, in the opinion of your committee, defeat the bill they report. For, although said roads and telegraph lines have been constructed, yet it is manifest, having reference to their pecuniary condition, that some such measure as that now recommended is necessary in order to keep them in working order and to secure to the government at all times the use and benefits of the same. It needs no argument to prove that insolvent railroad corporations, or corporations in danger of insolvency, cannot be relied upon to furnish the government the benefits contemplated by said act. In view of the liberal aid afforded by the government to said companies, the objects to be attained by the construction of said railroad and telegraph lines, and the general principles of interpretation of corporate grants of power, your committee are of the opinion that the reservation of a right to add to, alter, or amend said act ought to be liberally construed for the public benefit.

But whatever may be thought of the reserved right to alter, amend, or repeal in the act of 1862, it cannot be denied that the right reserved in the amendatory act of July 2, 1864, is as broad as words can make it.

Section 22 of this act is as follows:

"*And be it further enacted*, That Congress may at any time alter, amend, or repeal this act."

It has been argued that this right applies only to the act of 1864, and does not authorize any alteration or amendment of the act of 1862. Were this so, it would not defeat the bill of your committee, for it might well be sustained as an amendment to the act of 1864. But when the circumstances of the case are considered, when it is remembered that nothing had been done toward actual construction of said railroads under the act of 1862 and before the act of 1864, that the grants to the railroad companies named in the first act were greatly enlarged by the latter act, that the roads and telegraph-lines have been constructed under the provisions of the two acts, and that those provisions were almost inseparably interwoven, it seems to your committee that said acts should be considered as *in pari materia*—as constituting for purposes of interpretation but one act, and that, consequently, the power to alter, amend, or repeal reserved in the act of 1864, which is the last expression of the legislative will, applies to both said acts.

What, then, is the power thus reserved, that is to say, the general power to alter, amend, or repeal the charter?

It was defined by the Supreme Court of the United States in the case of Tomlinson *vs.* Jessup (15 Wallace, p. 458), as follows:

"The power reserved to the State by the law of 1841 authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original corporators or subsequent stockholders took their interests with knowledge of the existence of this power, and of the possibility of its exercise at any time in the discretion of the legislature.

"The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, *if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators*, which without that provision would be irrepealable, and protected from any measures affecting its obligation."

This decision places the reservation upon its true ground. It gives to the legislature the right to interfere when *the public interests require interference*. It preserves to the State *control over its contract with the corporators*, and the latter, by accepting the charter, *agree in advance that such control shall exist*. No one will deny that if the bill now reported should become a law and be assented to by said railroad corporations, it would thenceforth be binding upon them. But their acceptance of their charter, containing the reservations aforesaid, is an assent beforehand to the bill now proposed, or to any similar measure that Congress in its discretion shall deem necessary for the protection of the government or the creditors of said corporations. (Pa. College cases, 13 Wallace, pp. 213 and 214.) In this latter case the court spoke of the reserved right to alter or amend a charter as a "reservation to the State to make any alterations in the charter which the legislature in its wisdom may deem fit, just, and expedient to enact."

In the case of Sherman *vs.* Smith (1st Black, 593), the Supreme Court of the United States seem to recognize a right in the legislature, when the power to alter or amend a charter is reserved, to add to the liabilities of the stockholders. They said:

"Another view of this question, even assuming that the stipulation of the stockholders in the article of association amounted to a contract, is equally conclusive against the stockholders.

"According to the fifteenth section the association was authorized to establish a

bank of discount, deposit, and circulation, upon the terms and conditions, and subject to the liabilities prescribed in this act. It was not competent for the association to organize their bank upon any other terms or conditions, or subject to any other liabilities, than those prescribed in the general charter. Now, the thirty-second section, which reserved to the legislature the power to alter or repeal the act, by necessary construction reserved the power to alter or repeal all or any one of these terms and conditions, or rules of liability, prescribed in the act. The articles of association are dependent upon, and become a part of, the law under which the bank was organized, and subject to alteration and repeal, the same as any other part of the general system."

In Miller *vs.* The State (15 Wallace, p. 498), the Supreme Court said:

"Power to legislate, founded upon such a reservation in a charter to a private corporation, is certainly not without limit, and it may well be admitted that it cannot be exercised to take away or destroy rights acquired by virtue of such charter, and which by a legitimate use of the powers granted have become vested in the corporation, *but it may be safely affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect the original purposes of the grant or to secure the due administration of its affairs so as to protect the rights of its stockholders and of creditors, and for the proper disposition of the assets.*"

In Holyoke *vs.* Lyman (15 Wallace, p. 500) the court held that—

"The provision of the Revised Statutes of Massachusetts, chapter 44, section 23, and General Statutes, chapter 68, section 41, declaring that acts of incorporation shall be subject to amendment, alteration, or repeal at the pleasure of the legislature, reserves to the legislature the authority to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the legislature may deem necessary to secure either that object or other public or private rights."

Many decisions of the State courts might be referred to to the same effect, but it is unnecessary to cite them here. A number of them are cited in Report No. 440 of the Committee on the Judiciary of the House of Representatives at the present session. Your committee would also refer to that report for many important and valuable facts and tables relating to the subject under consideration.

If there was any room for doubt as to the power of Congress when that report was made, it has been completely removed by decisions of the Supreme Court since made in the following cases:

*Munn* v. *Illinois*, 4 Otto, 113.

*C. B. & Q. R. R. Co.* v. *Iowa*, ib., 155.

*Peik* v. *C. & N. W. R. R.*, ib., 164.

*C. M. & St. P. R. R. Co.* v. *Ackley*, ib., 179.

*Winona and St. Peter R. R. Co.* v. *Blake*, ib., 180.

*Stone* v. *Wisconsin*, ib., 181.

Being fully satisfied that Congress, under the reserved right to alter, amend, or repeal the charter of these companies, possesses the right to pass this bill, we do not consider it necessary to say what would be the case were that reservation not in the charter. Had it been omitted, it might still be argued with much force that the power to alter, amend, or repeal legally existed. No State can make a law impairing the obligation of a contract, because that is prohibited by the Federal Constitution.

But there is no such prohibition upon Congress; and as it is a fundamental principle that one Congress cannot limit the constitutional powers of a subsequent Congress, it may be argued that no mere corporate franchise can be granted by one Congress that a subsequent Congress may not alter, amend, or repeal. This is a very different proposition from an assertion that Congress may, at its pleasure, destroy vested rights of property. It may be argued that, except by a bankrupt act, Congress cannot impair the obligation of a contract, for want of a delegation of power to do so. But to impair the obligation of a contract is one thing and to alter, amend, or repeal a corporate franchise granted by Congress is another and a different thing, especially when the corporation is public or quasi public. A railroad corporation is a quasi-public corporation, exercising the right of eminent domain, maintaining and operating a highway and taking tolls, in virtue of its quasi-public character.

It is chartered for public purposes, and not mere private gain; and as its existence springs from public considerations, it is subject, perhaps, to control or regulation, or even to a repeal of its charter, when the public interest shall require it, and no constitutional provision stands in the way. But, as we have said, we do not deem it necessary to express a definite opinion upon this point. It is sufficient that in this case the power to alter, amend, or repeal is expressly reserved; and the effect of this reservation is, in the language of the Supreme Court (15 Wallace, 458), "to preserve to the State control over its contract with the corporators."

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A BILL to alter and amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act.

Whereas, on the first day of July, anno Domini eighteen hundred and sixty-two, Congress passed an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes"; and

Whereas afterward, on the second day of July, anno Domini eighteen hundred and sixty-four, Congress passed an act in amendment of said first-mentioned act; and

Whereas the Union Pacific Railroad Company, named in said acts, and under the authority thereof, undertook to construct a railway, after the passage thereof, over some part of the line mentioned in said acts; and

Whereas, under the authority of the said two acts, the Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, undertook to construct a railway, after the passage of said acts, over some part of the line mentioned in said acts; and

Whereas the United States, upon demand of said Central Pacific Railroad Company, have heretofore issued, by way of loan and as provided in said acts, to and for the benefit of said company, in aid of the purposes named in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum, payable half-yearly, to the amount of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars, which said bonds have been sold in the market or otherwise disposed of by said company; and

Whereas the said Central Pacific Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas, after the passage of said acts, the Western Pacific Railroad Company, a corporation then existing under the laws of California, did, under the authority of Congress, become the assignee of the rights, duties, and obligations of the said Central Pacific Railroad Company, as provided in the act of Congress passed on the third of March, anno Domini eighteen hundred and sixty-five, and did, under the authority of the said act and of the acts aforesaid, construct a railroad from the

city of San José to the city of Sacramento, in California, and did demand and receive from the United States the sum of one million nine hundred and seventy thousand five hundred and sixty dollars of the bonds of the United States, of the description before mentioned as issued to the Central Pacific Company, and in the same manner and under the provisions of said acts; and upon and in respect of the bonds so issued to both said companies, the United States have paid interest to the sum of more than thirteen and a half million dollars, which has not been reimbursed; and

Whereas said Western Pacific Railroad Company has issued and disposed of an amount of its own bonds equal to the amount so issued by the United States to it, and secured the same by mortgage, which are, if lawfully issued and disposed of, a prior and paramount lien to that of the United States, as stated and secured thereby; and

Whereas said Western Pacific Railroad Company has since become merged in, and consolidated with, said Central Pacific Railroad Company, under the name of the Central Pacific Railroad Company, whereby the said Central Pacific Railroad Company has become liable to all the burdens, duties, and obligations before resting upon said Western Pacific Railroad Company; and divers other railroad companies have been merged in and consolidated with said Central Pacific Railroad Company; and

Whereas the United States, upon the demand of the said Union Pacific Railroad Company, have heretofore issued, by way of loan to it and as provided in said acts, the bonds of the United States, payable in thirty years from the date thereof, with interest at six per centum per annum, payable half-yearly, the principal sums of which amount to twenty-seven million two hundred and thirty-six thousand five hundred and twelve dollars; on which the United States have paid over ten million dollars interest over and above all reimbursements; which said bonds have been sold in the market or otherwise disposed of by said corporation; and

Whereas said corporation has issued and disposed of an amount of its own bonds equal to the amount so issued to it by the United States as aforesaid, and secured the same by mortgage, and which are, if lawfully issued and disposed of, a prior and paramount lien, in the respect mentioned in said acts, to that of the United States, as stated, and secured thereby; and

Whereas the total liabilities (exclusive of interest to accrue) to all creditors, including the United States, of the said Central Pacific Company, amount in the aggregate to more than ninety-six million dollars, and those of the said Union Pacific Railroad Company to more than eighty-eight million dollars; and

Whereas the United States, in view of the indebtedness and operations of said several railroad companies respectively, and of the disposition of their respective incomes, are not and cannot, without further legislation, be secure in their interests in and concerning said respective railroads and corporations, either as mentioned in said acts or otherwise; and

Whereas a due regard to the rights of said several companies respectively, as mentioned in said act of eighteen hundred and sixty-two, as well as just security to the United States in the premises, and in respect of all the matters set forth in said act, require that the said act of eighteen hundred and sixty-two be altered and amended as hereinafter enacted; and

Whereas, by reason of the premises also, as well as for other cau es

of public good and justice, the powers provided and reserved in said act of eighteen hundred and sixty-four for the amendment and alteration thereof ought also to be exercised as hereinafter enacted: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the net earnings mentioned in said act of eighteen hundred and sixty-two, of said railroad companies respectively, shall be ascertained by deducting from the gross amount of their earnings respectively the necessary expenses actually paid within the year in operating the same and keeping the same in a state of repair, and also the sum paid by them respectively within the year in discharge of interest on their first mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said companies respectively for interest upon any other portion of their indebtedness; and the foregoing provision shall be deemed and taken as an amendment of said act of eighteen hundred and sixty-four, as well as of said act of eighteen hundred and sixty-two. This section shall take effect on the thirtieth day of June next, and be applicable to all computations of net earnings thereafter; but it shall not affect any right of the United States or of either of said railroad companies existing prior thereto.

SEC. 2. That the whole amount of compensation which may, from time to time, be due to said several railroad companies respectively for services rendered for the government shall be retained by the United States, one-half thereof to be presently applied to the liquidation of the interest paid and to be paid by the United States upon the bonds so issued by it as aforesaid, to each of said corporations severally, and the other half thereof to be turned into the sinking-fund hereinafter provided, for the uses therein mentioned.

SEC. 3. That there shall be established in the Treasury of the United States a sinking-fund, which shall be invested by the Secretary of the Treasury in bonds of the United States; and the semi-annual income thereof shall be in like manner from time to time invested, and the same shall accumulate and be disposed of as hereinafter mentioned. And in making such investments the Secretary shall prefer the five per centum bonds of the United States, unless, for good reasons appearing to him, and which he shall report to Congress, he shall at any time deem it advisable to invest in other bonds of the United States.

SEC. 4. That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the government by said Central Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking-fund, the sum of one million two hundred thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding.

That there shall be carried to the credit of the said fund, on the first day of February in each year, the one-half of the compensation for services hereinbefore named, rendered for the government by said Union

Pacific Railroad Company, not applied in liquidation of interest; and, in addition thereto, the said company shall, on said day in each year, pay into the Treasury, to the credit of said sinking-fund, the sum of eight hundred and fifty thousand dollars, or so much thereof as shall be necessary to make the five per centum of the net earnings of its said road payable to the United States under said act of eighteen hundred and sixty-two, and the whole sum earned by it as compensation for services rendered for the United States, together with the sum by this section required to be paid, amount in the aggregate to twenty-five per centum of the whole net earnings of said railroad company, ascertained and defined as hereinbefore provided, for the year ending on the thirty-first day of December next preceding.

SEC. 5. That whenever it shall be made satisfactorily to appear to the Secretary of the Treasury, by either of said companies, that seventy-five per centum of its net earnings as hereinbefore defined, for any current year are or were insufficient to pay the interest for such year upon the obligations of such company, in respect of which obligations there may exist a lien paramount to that of the United States, and that such interest has been paid out of such net earnings, said Secretary is hereby authorized, and it is made his duty, to remit for such current year so much of the twenty-five per centum of net earnings required to be paid into the sinking-fund, as aforesaid, as may have been thus applied and used in the payment of interest as aforesaid.

SEC. 6. That no dividend shall be voted, made, or paid for or to any stockholder or stockholders in either of said companies respectively at any time when the said company shall be in default in respect of the payment either of the sums required as aforesaid to be paid into said sinking-fund, or in respect of the payment of the said five per centum of the net earnings, or in respect of interest upon any debt the lien of which, or of the debt on which it may accrue, is paramount to that of the United States; and any officer or person who shall vote, declare, make, or pay, and any stockholder of any of said companies who shall receive any such dividend contrary to the provisions of this act, shall be liable to the United States for the amount thereof, which, when recovered, shall be paid into said sinking-fund. And every such officer, person, or stockholder who shall knowingly vote, declare, make, or pay any such dividend, contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding ten thousand dollars, and by imprisonment not exceeding one year.

SEC. 7. That the said sinking-fund so established and accumulated shall, at the maturity of said bonds so respectively issued by the United States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not reimbursed, subject to the provisions of the next section.

SEC. 8. That said sinking-fund so established and accumulated shall, according to the interest and proportion of said companies respectively herein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking-fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking-fund may be entitled thereto in due order; but the

provisions of this section shall not operate or be held to impair any existing legal right, except in the manner in this act provided, of any mortgage, lien, or other creditor of any of said companies respectively, nor to excuse any of said companies respectively from the duty of discharging, out of other funds, its debts to any creditor except the United States.

SEC. 9. That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into the Treasury, or into said sinking-fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon all the property, estate, rights, and franchises of every description granted or conveyed by the the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal, and mixed, assets, and income of the said several railroad companies respectively, from whatever source derived, subject to any lawfully prior and paramount mortgage, lien, or claim thereon.

SEC. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceeding against the said several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceeding already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbofere mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to.

SEC. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced.

SEC. 12. That nothing in this act shall be construed or taken in any wise to affect or impair the right of Congress at any time hereafter further to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal, as, in the opinion of Congress, justice or the public welfare may require. And nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in favor of the United States.

SEC. 13. That each and every of the provisions in this act contained shall severally and respectively be deemed, taken, and held as in alteration and amendment of said act of eighteen hundred and sixty-two and of said act of eighteen hundred and sixty-four respectively, and of both said acts.

C

45TH CONGRESS, 2d Session. | SENATE. | REPORT No. 125.

IN THE SENATE OF THE UNITED STATES.

MARCH 11, 1878.—Ordered to be printed.

Mr. MATTHEWS, from the Committee on Railroads, submitted the following

# REPORT:

[To accompany bill S. 512.]

The Committee on Railroads, to whom was referred Senate bill No. 512, a bill in relation to the Pacific railroads, report the same back, with a substitute therefor, recommending the passage of the latter.

The committee have given to the subject-matter of this bill and substitute patient thought and careful consideration. The interests involved in these measures are great, and have attracted wide-spread attention. The United States and the corporations concerned should both strive to reach some common ground whereby their several interests may be conserved, and their conflicting views relative thereto fairly, justly, and equitably adjusted. To reach this ground has been the purpose of the committee, and they hope to show that their efforts have been at least fairly successful. Not unmindful of the difficulties which surround the subject considered, the committee believe that the substitute reported presents a just solution thereof.

It is not the purpose of the committee to discuss the questions of law which may affect the peculiar relations existing between the United States and these corporations. What Congress has the power to do touching their relations is one thing. What is most wise to be done is quite another thing. Congress has reserved to itself the power, under certain limitations, "to alter, amend, or repeal" the acts under and in pursuance of which United States bonds were issued to these corporations to aid in the construction of their several roads. The committee do not care to discuss the power here reserved, nor to express an opinion relative to what Congress may or may not do thereunder and in pursuance thereof. The case presented to the committee seems to be one of practical business rather than of legal construction.

It turns upon a few facts, all of which are admitted, and about which there is no dispute. Under the act of July 1, 1862, and the acts amending the same or supplemental thereto, the United States advanced to the Central Pacific Railroad Company, of California, and the Western Pacific Railroad Company (now practically one corporation), to aid in the construction of the roads, United States bonds amounting in the aggregate to the sum of $27,855,680. The bonds mature thirty years after date, and during the period bear 6 per centum interest per annum. The interest for the term, therefore, will amount to $50,140,224, making, with principal, at the maturity of the bonds, a total of $77,995,904.

Under the same acts there was issued to the Union Pacific Railroad Company, for like purposes, bonds bearing same rate of interest, and

running for same term, to the amount of $27,236,512, with aggregate interest, for the term, of $49,025,721, and making a total at maturity of $76,262,233.

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| The total of principal therefore is | $55,092,192 |
| The total of interest | 99,165,945 |
| Making a grand total at maturity of bonds of | 154,258,137 |

This large sum is to be paid by the United States, and is to be repaid by the said corporations under and in pursuance of the aforesaid acts of Congress. Current repayment springs from two sources only:

1. Only one-half of the compensation for services rendered for the government by said companies shall be required to be applied to the payment of the bonds issued by the government in aid of the construction of said roads.—Section 5, act of July 2, 1864.
2. After said road is completed, until said bonds and interest are paid at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.—Section 6, act of July 1, 1862.

The interest paid by the United States to and including January 1, 1878, on account of the bonds issued to these corporations was $31,898,231.26. Under the first of the above provisions of law for reimbursement the United States had received at said date, $7,342,431.55, exclusive of unadjusted accounts and disputed claims.

Under the second provision of law cited the companies have made no payment directly, though the United States has retained all of the earnings for government service for the past five years, one-half of which amount the companies claim should have been paid to them as they were earned, and which they aver exceeds the amount due to the government for five per centum of net earnings since the roads were completed, under the most liberal calculation allowed by the law referred to. A controversy has existed between the government and the said corporations relative to the period at which the second provision became operative, the former insisting that it became operative in May, 1869, when the tracks of the Union Pacific and Central Pacific roads were connected, making their lines continuous; the latter contending that it did not become operative until October, 1874, when the President of the United States, upon the report of a commission appointed by him to definitely fix the date of completion of said roads, declared their completion as of that date.

The position of the corporations in this regard has been sustained by the circuit courts of the United States for the districts of California and Massachusetts. Consequently nothing can be derived in the way of repayment under the said second provision except from net earnings subsequent to said last-named date.

Here arises another dispute between the United States and said corporations. The former contends that the balance of gross earnings left, after deducting legitimate operating expenses, constitute the net earnings from which the five per centum is to be determined and paid. The corporation plant themselves on the rule laid down by the Supreme Court in *St. John* vs. *The Erie Railway Company*, 22 *Wallace*, 136, and say that all current debts and payments obligatory are to be deducted from the gross earnings in order to determine the net earnings from which said five per centum is to be paid.

Thus far the position of the corporations is sustained by the *pro forma* decision of the circuit court of the United States for the district of Iowa. If the Supreme Court of the United States should affirm this judgment of the circuit court, a great shrinkage must result in the fund for the reimbursement of the United States under the said second provision.

At best and most the reimbursement of the United States must, under both of said provisions of law for repayment, fall far below even the interest of the bonds issued to said several corporations in aid of the construction of their roads. Whatever remains over and above these current payments, of whatever amount they may be, must be carried on until the maturity of said bonds. This has been settled by the Supreme Court in *United States* vs. *Union Pacific R. R. Co.*, 1 *Otto*, 72.

The most liberal computation warranted by existing facts cannot place the amount which will be due to the United States from the corporations at the maturity of the said bonds, on account of principal and interest, at less than $120,000,000. As security for this vast indebtedness, or whatever other amount, be it greater or less, as intermediate contingencies may order, the United States holds a second mortgage on the roads and franchises of the said corporations. It is feared that this is more than the properties will be worth at the maturity of the bonds.

What can be done by the United States and the corporations involved so as to deal in the wisest way with this state of case? This is a question of business; not of law. These corporations are the debtors of the United States. They may prove solvent or insolvent, as we may wisely or unwisely act. The whole amount due, and to become due, to the United States may be saved, or it may be lost. The result depends much on our present action. The case we are dealing with grows worse and worse as years go by, if left to the plan of the present law.

The committee have endeavored to meet the grave and exceedingly important subject committed to them in a spirit of practical adjustment, in order to secure to the United States ultimate repayment of the full amount of advances to these corporations, without harsh or unnecessary embarrassment to them. The substitute herewith reported, presents the mature judgment of the committee, after most careful consideration of the subject.

The plan presented by the substitute is simple and yet effective. As hereinbefore shown, the principal of the bonds issued to these corporations is $55,092,192. The total interest for the term will be $99,165,945. The plan of the committee is the establishment of a sinking-fund which shall have, at the maturity of the bonds, paid off all of the interest and several millions of the principal, leaving due and unpaid at that time about $52,412,530.

It is proposed to "divide this balance into fifty semi-annual installments, one of which shall be paid on the first day of April, and one on the first day of October, in each year, with interest thereon at the same rate per annum paid by the United States on the larger part of its public debt, on the first day of January preceding the date of the payment of the several installments." In case of failure or refusal of either of the companies to pay, in accordance with the foregoing provisions, for the period of six months, then the defaulting company is to be subject to the terms of the laws now in force, and the United States may at its option proceed to collect the entire amount then due under existing provisions of law, from such company at once; or, in the alternative, retain to meet and extinguish the default, any sum due or accruing from the government on account of transportation, and otherwise enforce the obligations arising under this act, as now proposed by the committee.

It is also provided that the mortgage which the United States now holds to secure the payment by the several corporations of the principal and interest of the bonds issued in aid of the construction of said roads shall continue in force as to the semi-annual payment hereinbefore

stated, and be enlarged so as to secure performance of the new obligations arising under this act.

It is best for both the United States and the corporations that the present unsatisfactory condition of the relations existing between them should be brought to an end; and that this should be done in such manner as shall be satisfactory, complete, and lasting.

The committee believe that the plan herewith reported will accomplish this end. The United States will receive in the end every dollar of the principal and interest of the bonds issued to the corporations, and the latter can meet all of the payments required without embarrassment to their financial concerns. The fact that a part of this indebtedness is extended through a term of years is not an important one to the United States, for it is to receive interest on such payments as are deferred. It is one of the most common resorts of debtor and creditor in cases where immediate payment is impracticable. Every plan which proposes to extinguish the indebtedness of these corporations at the maturity of the bonds involves serious objections.

They require payments so large as to be necessarily embarrasing to the corporations; and on this point it seems to the committee that it would be unwise to make the payments so large as to deprive the corporations of the ability to meet all of their current obligations promptly, and to keep the roads in the highest condition of perfection and efficiency of first-class railways.

One of the greatest interests the government and the people can have in these roads is in the maintenance of a high standard of perfection, assuring rapid and safe transportation of freight and passengers over the lines.

When the roads were first projected very few persons had faith in their commercial importance. The United States desired their construction for postal and military purposes, and they have been most effective in both respects. The savings to the government in these particulars have been enormous. If the companies could have obtained an amount of transportation on government account equal to that carried before the construction of the roads, the one-half of compensation for the carriage of which the United States is entitled to withhold and apply on account of the bonds issued, it would have extinguished the whole indebtedness arising therefrom long before the maturity of the bonds, and if the companies could have maintained the rates charged by them in the beginning of the operation of their roads, the amounts accruing to the government under the two provisions of law hereinbefore cited would doubtless have been sufficient to discharge the entire claim of the United States at the maturity of the bonds.

But unexpectedly and to the surprise of everybody these roads, forming a continuous line across the continent, rapidly grew into great commercial importance. This necessitated a reduction of rates and resulted in a direct benefit to the government, for all the transportation done for it must be at the same rates charged to private parties. But it is not improbable that the commercial earnings of the roads have now reached their maximum limit. Other lines are projected and in course of construction across the continent. When completed, competition will be sharp and through rates must be reduced. The companies will then do well if they can make up from a development of local business the losses which will result from competition on through business; for this development, being largely in connection with the mineral deposits of the country, must be fostered by cheap local rates, as most of the ores are of too low grade to bear high rates of transportation. Add to this the competition of local roads for all classes of business, and it is not an-

reasonable to believe that the commercial earnings of the roads have reached their maximum.

But suppose that these considerations are mere speculations not likely to be realized, and Congress should go on and impose harsh terms upon these companies and exact from them burdensome and embarrassing payments, what will be the result? First, the corporations will resist such legislation, and litigation will follow. In this resistance in the courts the companies may be successful in the future as they have been in the past. Then whatever Congress may have done will go for nothing. But suppose the companies should fail in their resort to the courts, and be required to comply with harsh terms imposed and to make the embarrassing payments exacted, what must follow?

If not restrained by competition an increase of rates is the inevitable result. Who can be benefited by this? Surely not the public, for they are the patrons of the road. Surely not the government, for it must pay the same rates that are charged to private parties. Suppose competition prevents an increase of rates. What will follow? Most naturally financial embarrassment and an inability to discharge the onerous burdens imposed. This surely will not tend to better the chances of the government for reimbursement. Is it not best to avoid all of these contingencies by making a fair, safe, reasonable business-like adjustment of the whole case? One which will be accepted by the corporations concerned, and at the same time secure absolutely the entire claim of the government? To save over $120,000,000 to the public Treasury is worth an earnest effort.

To do this in a way which will induce the hearty co-operation of the public debtors is better than to adopt a mode which shall excite their resistance. This is the plain practical business path for Congress to tread. The committee believe that the substitute herewith reported will accomplish all that they claim for it, and ask for it the favorable consideration of the Senate.

The practical operation of the plan proposed in this bill is illustrated by the following statements:

The United States bonds issued to the two companies are:

| | | |
|---|---|---|
| To the Union Pacific Railroad Company, principal | | $27,236,512 |
| Add thereto 30 years' interest, at 6 per cent | | 49,025,721 |
| Principal and interest due at maturity | | 76,262,233 |
| To the Central and Western Pacific Railroad Companies | $27,855,680 | |
| Add thereto 30 years' interest, at 6 per cent | 50,140,224 | |
| Principal and interest due at maturity | | 77,995,904 |
| Or together, total sum paid and to be paid by the United States | | 154,258,137 |
| The average date of maturity of the bonds as appears from calculations of the Treasury Department is given as of July 1, 1898, (see note to page 25, report No. 440, House of Reps., 44th Congress, 1st session). Add to the above 27 months interest to October 1, 1900, at 6 per cent | | 7,437,446 |
| Sum on Treasury ledgers to be liquidated | | 161,695,583 |
| Deduct repayments by one-half compensation for services rendered up to and including March 31, 1878, estimated:* | | |
| For the Union Pacific Company | $6,000,000 | |
| For the Central Pacific Company | 3,000,000 | |
| Or together | | 9,000,000 |
| Balance to be provided for under this plan | | 152,695,583 |

*The amounts standing to their credit on the Treasury books, as of January 1, 1878, are $5,134,103.84 and $2,208,327.71, respectively; in addition to which there are $——— and $——— of unadjusted accounts, and claims are pending for large sums alleged to be due prior to and subsequent to those already audited, which would carry the aggregate far above this *estimate*. The exact figures are not material to this calculation.

There is retained in the Treasury, under the act of March 3, 1873, one-half the compensation for government services, amounting to a large sum, which, under the decision of the Supreme Court, is due and payable to the railroad companies, and which it is proposed shall still be held in the Treasury and turned over as a nucleus of the sinking-fund. This sum, like the foregoing, cannot at present be determined with accuracy by reason of so large a proportion of disputed or unadjusted accounts. It is believed to be about one million dollars for each company on January 1, 1878, to be increased by what shall accrue from the same sources, to March 31, 1878. If it should fall short of that sum, it is required to be made up to that sum presently.

The committee have the calculation of an expert as to the working of a sinking-fund so constituted, and have ascertained that "a sinking-fund, commencing with $1,000,000, in hand April 1, 1878, and semi-annual payments thereto of $500,000 (the first being made October 1, 1878), with three per cent. semi-annual accumulations thereon, would amount, October 1, 1900, the date of the last payment (for each company) to $50,141,526; or, taking the two companies together, the amount which will have accumulated will be at least $100,283,053; or two-thirds of the total amount which will have been paid out of the United States Treasury by the date when all the bonds have been redeemed, leaving a balance to be liquidated in the manner described of $52,412,530.

Of this balance upon the above estimate (and the actual figures will not vary far from it), there would be due from the Union Pacific Company $23,797,636, and from the Central Pacific $28,614,894.

Dividing these sums into 50 installments, in the manner proposed, would require from the former company a semi-annual payment of a principal sum of $475,953; and from the latter company of $572,298 together with interest from October 1, 1900, accrued on the entire unpaid principal sum, at whatever rate per annum the government may be paying on the greater part of the public debt on the 1st day of January next preceding each payment.

---

The bill, if amended, will read as follows:

A BILL to create a sinking-fund for the liquidation of the government bonds advanced to the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company, and the Union Pacific Railroad Company, under and in pursuance of the act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, and the acts amending the same or supplemental thereto, and for the settlement of the claims of the government on account of said bonds.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in order to establish a sinking-fund for the purpose of liquidating the claims of the government on account of the bonds advanced under said act of July first, eighteen hundred and sixty-two, and the acts amending the same or supplemental thereto, to the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company, and to the Union Pacific Railroad Company, the Secretary of the Treasury of the United States is hereby authorized to carry to the credit of a sinking-fund for the Central Pacific Railroad Company, a corporation organized and existing under the laws of the State of California, the successor by consolidation of the said Central Pacific Rail-

PACIFIC RAILROADS.

...VARIOUS PACIFIC RAILROAD ACTS.

...mittee of the Whole House on the state of the
...d to be printed.

... Pacific Railroad, submitted

...T:

...bill H. R. 4158.]

... Railroad, to whom was referred H. R.
... and amend the act entitled 'An act to aid
...ailroad and telegraph line from the Missouri
...ean, and to secure to the government the use of
...l, military, and other purposes,' approved July 1,
... alter and amend the act of Congress approved July
...endment of said first-named act," report back the same,
...mmendation that it do pass.

...ow, in support of their views, your committee present the fol-
... statement of facts:

*Union Pacific.*

| | |
|---|---|
| ...apital stock, paid | $36,762,300 00 |
| Government loan, principal | $27,236,512 00 |
| Interest paid by government on above | 15,969,801 45 |
| | 43,206,313 45 |
| Interest repaid government by half transportation account, and covered into the Treasury | 5,134,327 84 |
| Balance due government January 31, 1878, exclusive of its claim for interest upon the interest it has paid | 38,071,985 61 |
| But the company claims further credits that have not been allowed, and some of which are in litigation, to wit: 1,299,652 + 1,600,000 = | 2,899,652 00 |
| Leaving | 35,172,333 61 |

as the indebtedness to the government, should said further credits be allowed, exclusive of the government's claim for interest upon interest above mentioned.

As to the foregoing see—

Report of Secretary of Interior for 1877, Forty-fifth Congress, second session, Ex. Doc. 1, part 5, vol. 1, pp. xxiv, xxv, xxvii, xxix, xxx.

Public debt statement for January, 1878.

The interest (payable in semi-annual installments) which the government pays annually upon its loan to the company—6 per cent. on $27,236,512—is $1,634,190.72.

The first mortgage of the company, and whose lien is prior to that of the government, is for about the same amount as the government loan, and bears the same rate of interest. The annual interest on it is, therefore, about $1,634,190.72. It is stated by the government directors (see report, *ante*, p. 828) as $1,633,920.

The total funded indebtedness of the company June 30, 1877 (see *Secretary's report, ante*, xxv), was $78,733,712.

roads for the government, whenever required to do so by any department thereof, at fair and reasonable rates of compensation (said rates not to exceed the amounts paid by private parties for the same kind of service), the whole amount of which shall be paid by the government to said companies on the adjustment of the accounts therefor, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid.

SEC. 4. That the mortgage of the government created by the fifth section of the act of July first, eighteen hundred and sixty-two, amended by the act of July second, eighteen hundred and sixty-four, shall not be in any way impaired or released by the operations of this act until the whole amount of the principal of said bonds, with the interest thereon paid by the United States as aforesaid, shall be fully paid; but said mortgage shall remain in full force and virtue, and, upon the failure of either of said companies to perform the obligations imposed upon them by this act, said mortgage may also be enforced against such defaulting company for any such default; the government, however, duly crediting and allowing to the company upon said mortgage all payments which may have been made in part execution of this act, and interest thereon to be credited and added thereto semi-annually as hereinbefore provided.

SEC. 5. That this act shall take effect upon its acceptance by said railroad companies, or if accepted by only one of said companies, then as to the company so accepting the same, which acceptance shall be filed with the Secretary of the Treasury within four months from the passage of this act, and shall show that said company or said companies have agreed to the same at a meeting of stockholders; and if said companies shall make punctual payment of the sums herein provided for, and perform all the conditions hereof, this act shall be deemed and construed to be a final settlement between the government and the company or companies so performing the same, in reference to all matters relating to a reimbursement to the government by said companies; but in case of failure so to do, Congress may at any time alter, amend, or repeal this act as to such company so making default.

SEC. 6. That all acts and parts of acts inconsistent with this act are hereby repealed.

C

45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 622.

# AMENDING THE VARIOUS PACIFIC RAILROAD ACTS.

APRIL 17, 1878.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CHALMERS, from the Committee on the Pacific Railroad, submitted the following

## REPORT:

[To accompany bill H. R. 4158.]

The Committee on the Pacific Railroad, to whom was referred H. R. 4158, entitled "A bill to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July 1, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act," report back the same, with a recommendation that it do pass.

And now, in support of their views, your committee present the following statement of facts:

*Union Pacific.*

| | | |
|---|---|---|
| Capital stock, paid | | $36,762,300 00 |
| Government loan, principal | $27,236,512 00 | |
| Interest paid by government on above | 15,969,801 45 | |
| | 43,206,313 45 | |
| Interest repaid government by half transportation account, and covered into the Treasury | 5,134,327 84 | |
| Balance due government January 31, 1878, exclusive of its claim for interest upon the interest it has paid | | 38,071,985 61 |
| But the company claims further credits that have not been allowed, and some of which are in litigation, to wit: 1,299,652 + 1,600,000 = | | 2,899,652 00 |
| Leaving | | 35,172,333 61 |

as the indebtedness to the government, should said further credits be allowed, exclusive of the government's claim for interest upon interest above mentioned.

As to the foregoing see—

Report of Secretary of Interior for 1877, Forty-fifth Congress, second session, Ex. Doc. 1, part 5, vol. 1, pp. xxiv, xxv, xxvii, xxix, xxx.

Public debt statement for January, 1878.

The interest (payable in semi-annual installments) which the government pays annually upon its loan to the company—6 per cent. on $27,236,512—is $1,634,190.72.

The first mortgage of the company, and whose lien is prior to that of the government, is for about the same amount as the government loan, and bears the same rate of interest. The annual interest on it is, therefore, about $1,634,190.72. It is stated by the government directors (see report, *ante*, p. 828) as $1,633,920.

The total funded indebtedness of the company June 30, 1877 (see *Secretary's report, ante,* xxv), was $78,733,712.

The items of this indebtedness (see manuscript report of the company to the Secretary for 1877) were as follows:

| | |
|---|---|
| First-mortgage bonds | $27,232,000 |
| Sinking-fund mortgage bonds | 14,186,000 |
| Income bonds | 1,000 |
| Land-grant bonds | 7,374,000 |
| Omaha bridge bonds | 2,235,000 |
| Certificates for bonds | 477,200 |
| United States bonds loaned | 27,236,512 |
| Total funded debt, including government loan | 78,733,712 |

The nature of this indebtedness is more fully shown by the report of the government directors for 1876 (pamphlet, 17), as follows:

*Statement of the funded debt of the company June 30, 1876.*

| Name of bonds. | Amount issued. | Amount redeemed. | Amount outstanding. | Rate of interest. | Coupons payable. |
|---|---|---|---|---|---|
| First mortgage | $27,237,000 | $5,000 | $27,232,000 | 6 per cent., gold | January and July. |
| Sinking fund | 14,470,000 | 144,000 | 14,326,000 | 8 per cent., currency. | March and September. |
| Income | 9,355,000 | 9,345,000 | 10,000 | 10 per cent., currency. | Last coupon, Sept. 76. |
| Land-grant | 10,400,000 | 2,889,000 | 7,511,000 | 7 per cent., currency. | April and October. |
| Omaha bridge | 2,500,000 | 221,000 | 2,279,000 | 8 per cent., gold | Do. |
| Total outstanding | | | 51,358,000 | | |
| United States for 6 per ct. currency bonds. | | | 27,236,512 | | |
| Grand total | | | 78,594,512 | | |

The *floating* debt of the company on August 28, 1876, was $740,153. This includes $82,703.20 of outstanding overdue coupons. Against this the company holds, sinking-fund bonds, amount owned by the company June 30, 1876, $1,530,000; United States, amount due the company for one-half approved accounts for transportation June 30, 1876, $1,252,505.92, and interests in several railroads in Colorado and Utah more or less directly connected with its line.

In considering the question of the ability of the company to comply with the requirements of the pending bill, as proposed to be amended, the floating debt of the company may be laid out of view, as it is very small, less than $1,000,000, and the available assets of the company are more than sufficient to extinguish it at any moment. The land-grant bonds may also be laid out of view, for the land-grant is sufficient not only to pay the current interest upon them, but also the principal when due, and leave a large surplus to be applied to the other indebtedness of the company. The land-grant was about 12,000,000 acres. (See Report No. 440, H. of R., 44th Cong., 1st sess., page 3, note 15.)

And see Report of Government Directors for 1877 (Report of Secretary of the Interior, ante, p. 821), who say:

The land granted to the company is mortgaged to secure the payment of the land-grant bonds. Number of acres sold, 1,341,779.30; amount due company on contracts, $3,049,134.53. Principal received, $2,618,293.71; interest, $442,681.79; total, $3,060,775.50. Acres sold during last year, 67,971.53; average price per acre, $2.92.

In view of the grasshopper scourge which has afflicted Nebraska for several years past, the number of acres of land sold by the company during the last year is a gratifying surprise, and now that the scourge seems to have passed away, and immigration is again pouring into the State, the sales in the future must increase rapidly.

| | |
|---|---|
| The amount of land-grant bonds originally issued was | $10,400,000 00 |
| Amount outstanding June 30, 1877 | 7,374,000 00 |
| Amount retired from sales of land | 3,026,000 00 |

"Undoubtedly the land grant will retire the land-grant bonds, and leave a large surplus over for the extinguishment of other indebtedness of the company."

## RECEIPTS AND OPERATING EXPENSES.

The gross receipts and operating expenses of the company for the last four years were as follows:

| For the year ending— | No. of report. | Gross receipts. | Operating expenses. | Net receipts. |
|---|---|---|---|---|
| June 30, 1874 | 23 | $10,246,760 16 | $5,089,789 17 | $5,156,970 99 |
| June 30, 1875 | 18 | 11,522,021 54 | 5,373,655 87 | 6,048,365 67 |
| June 30, 1876 | 11 | 12,113,990 69 | 5,447,819 27 | 6,666,171 42 |
| June 30, 1877 | 825 | 13,719,343 82 | 5,402,252 24 | 8,317,091 58 |
| | | | | 26,188,599 66 |
| Average annual net receipts | | | | 6,547,149 91 |

| | | |
|---|---|---|
| Average annual gross receipts, less operating expenses, as *ante* | | $6,547,149 91 |
| Deduct interest on first mortgage | $1,633,920 00 | |
| Five per cent. on net earnings, payable to government, under existing law, say | 245,661 00 | |
| One-half transportation, payable to government under existing law, say | 421,311 87 | |
| Interest on company's sinking-fund bonds, 8 per cent. on $14,326,000 | 1,146,080 00 | |
| Interest on income-bonds, 10 per cent. on $10,000 | 1,000 00 | |
| Interest on Omaha bridge bonds, 8 per cent. on $2,279,000. | 182,320 00 | |
| One-half transportation account to be paid into the sinking fund as per bill | 421,311 87 | |
| Further sums to be paid to same as per bill | 850,000 00 | |
| | | 4,901,604 74 |
| Leaving for dividends among stockholders | | 1,645,545 17 |

Being about 4½ per cent. on the nominal amount of the stock, or 6½ per cent. on its present market value.

From the foregoing it will be seen that the amount the company will have to pay annually to the government and the sinking fund, should the bill we report become a law, will be about as follows:

| | | |
|---|---|---|
| Five per cent. of net earning payable under existings law | | $245,661 00 |
| One-half transportation account, payable under existing law | | 421,311 00 |
| | | 666,972 00 |
| Into the sinking fund: | | |
| One-half transportation account, say | $421,311 00 | |
| Cash | 850,000 00 | |
| | | 1,271,311 00 |
| Total | | 1,938,283 00 |

As the annual interest payable by the government is $1,634,190.72 the above sum would provide only $304,092 annually for the payment of the principal of the government loan.

### CENTRAL PACIFIC.

"This company embraces, by consolidation (besides the original Central Pacific Company), the Western Pacific, the California and Oregon, the San Francisco, Oakland and Alameda, and the San Joaquin Valley Companies."—Report of Secretary of Interior for 1877, p. xxv.

Three of these roads, the original Central Pacific, the Western Pacific, and the California and Oregon, whose aggregate length is about 1,927 *miles, have received subsidies* from the government, the last-named in

lands. The other roads, whose aggregate length is about 187 miles, have not directly received such subsidies.

It has been suggested that in ascertaining the 5 per cent. of net earnings to which the government is entitled under the charter, the earnings of the non-subsidized roads are not to be taken into account. Such was not the view taken by the company in 1872. In the report of the directors to the stockholders for that year the directors said (page 12):

> Since the construction of your road to a junction with the Union Pacific at Ogden, there have been added to it by construction and consolidation 480 miles, viz: Western division, 141 miles; Oregon division, 152 miles; San Joaquin, 146 miles; San José, 18 miles; Alameda, 17 miles; Oakland, 6 miles. All these additions to the main line have proven at once profitable investments, adding to and with themselves increasing the pro-rata earnings and net income of each mile of the whole.

And treating of the "relations of your road to the government" and referring to the additions above mentioned, they said (page 15):

> All the additions are consolidated with the main line and are equally with it security to the government for its loan, and these additions are and will ever be more valuable per mile than the greater part of the main line.

This view is, perhaps, in some degree supported by the decision of the Supreme Court in St. John *vs.* The Erie Railway Company; but we do not feel called upon to express an opinion upon it. For whether it is correct or whether the earnings of the subsidized roads alone are to be taken into account, the company will be able, without difficulty, to comply with the provisions of the bill herewith reported.

| | |
|---|---|
| The capital stock of the company paid in is (report of Secretary of Interior for 1877, p. xxv) | $54,275,500 00 |
| The government loan is— | |
| To Central Pacific | 25,885,120 00 |
| To Western Pacific | 1,970,560 00 |
| | 27,855,680 00 |
| Interest paid by United States to October 31, 1877, on Central Pacific loan, and not reimbursed | 12,519,447 13 |
| Interest paid by United States to October 31, 1877, on Western Pacific loan, and not reimbursed | 988,891 51 |
| Total, October 31, 1877 | 41,364,018 64 |

(Report of Secretary, *supra*, p. xxix.)

This is exclusive of a claim by the government for interest upon the interest it has paid.

The government pays (in semi-annual installments) interest on its subsidy-bonds amounting annually to 6 per cent. on $27,885,680= $1,671,340.80.

Under the power conferred by the charter the company has issued first-mortgage bonds, whose lien is paramount to that of the United States, to about the same amount, and bearing the same rate of interest.

The funded debt of the company, according to the report of the directors to the stockholders for 1876 (the last report we have been able to obtain), was, on December 31, 1876, as follows:

Statement of bonds in detail December 31, 1870.

| Character of bonds. | Series. | Date of bonds. | Amount of bonds authorized. | Amount of bonds issued. | When due. | Rate of interest. | Interest payable— | |
|---|---|---|---|---|---|---|---|---|
| Convertible mortgage | ..... | Dec. 1, 1862 | $1,500,000 | $1,483,000 | Jan. 1, 1883 | 7 per cent. | January and July | Sinking fund commencing 1863; $35,000 yearly. |
| California State aid | ..... | July 1, 1864 | 1,500,000 | 1,500,000 | July 1, 1884 | ....do | ....do | Interest payable by State of California; sinking fund commencing 1870; $50,000 yearly. |
| Central Pacific, first mortgage | A | July 1, 1865 | 3,000,000 | 2,995,000 | July 1, 1895 | 6 per cent. | ....do | A, B, C, D, sinking fund commencing 1870; $50,000 yearly. |
| Do | B | July 1, 1866 | 1,000,000 | 1,000,000 | July 1, 1896 | ....do | ....do | |
| Do | C | July 1, 1866 | 1,000,000 | 1,000,000 | July 1, 1896 | ....do | ....do | |
| Do | D | July 1, 1866 | 1,390,000 | 1,383,000 | July 1, 1896 | ....do | ....do | |
| Do | E | Jan. 1, 1867 | 4,000,000 | 3,997,000 | Jan. 1, 1897 | ....do | ....do | E, F, G, H, I, sinking fund commencing 1872; $50,000 yearly. |
| Do | F | Jan. 1, 1868 | 4,000,000 | 3,999,000 | Jan. 1, 1898 | ....do | ....do | |
| Do | G | Jan. 1, 1868 | 4,000,000 | 3,999,000 | Jan. 1, 1898 | ....do | ....do | |
| Do | H | Jan. 1, 1868 | 4,000,000 | 3,999,000 | Jan. 1, 1898 | ....do | ....do | |
| Do | I | Jan. 1, 1868 | 3,525,000 | 3,511,000 | Jan. 1, 1898 | ....do | ....do | |
| Western Pacific, old issue | ..... | Dec. 1, 1865 | ..... | 112,000 | Dec. 1, 1895 | ....do | June and December | See note. |
| Western Pacific, first mortgage | A | July 1, 1869 | 1,970,000 | 1,858,000 | July 1, 1899 | ....do | January and July | Sinking fund commencing 1876; $25,000 yearly. |
| Do | B | July 1, 1869 | 765,000 | 765,000 | July 1, 1899 | ....do | ....do | |
| California and Oregon, first mortgage | A | Jan. 1, 1868 | 6,000,000 | 6,000,000 | Jan. 1, 1888 | ....do | ....do | Sinking fund commencing 1876; $100,000 yearly. |
| Central Pacific, California and Oregon division. | B | Jan. 1, 1872 | 7,200,000 | 2,000,000 | Jan. 1, 1892 | ....do | ....do | Do. |
| San Francisco, Oregon and Alameda | ..... | July 1, 1870 | 1,500,000 | 500,000 | July 1, 1890 | 8 per cent. | ....do | Sinking fund commencing 1880; $100,000 yearly. |
| San Joaquin Valley Railroad | ..... | Oct. 1, 1870 | 6,080,000 | 6,080,000 | Oct. 1, 1900 | 6 per cent. | April and October | Sinking fund commencing 1880; $50,000 yearly. |
| Land-grant | ..... | Oct. 1, 1870 | 10,000,000 | 9,276,000 | Oct. 1, 1890 | ....do | ....do | |
| | | | 62,430,000 | 55,457,000 | | | | |

NOTE.—One hundred and twelve Western Pacific bonds "A," are reserved by the company unsold, to take up or exchange for the one hundred and twelve bonds of issue of December 1, 1865, still outstanding.

E. H. MILLER, JR., *Secretary.*

The gross earnings of the road, less the operating expenses, for the years 1872 to 1876, both inclusive, as stated in the reports of the directors to the stockholders, were as follows:

| | |
|---|---|
| 1872 | $6,952,361 73 |
| 1873 | 7,894,681 [illegible] |
| 1874 | 8,342,898 [illegible] |
| 1875 | 9,177,882 [illegible] |
| 1876 | 9,137,004 [illegible] |
| Total for five years | 41,504,829 77 |
| Average annual net receipts | 8,300,965 [illegible] |

If we deduct the interest upon the first mortgage bonds, as well as the operating expenses, from the gross receipts, the account for said five years would stand as follows:

| | |
|---|---|
| Gross receipts, less operating expenses | $41,504,829 77 |
| Deduct 5 years' interest on first-mortgage bonds, $1,671,340.80 × 5 | 8,356,704 [illegible] |
| Not earnings for 5 years | 33,148,124 77 |
| Average annual net earnings | 6,629,624 [illegible] |

5 per cent. on which is $331,481.

We think that the net earnings of the road in the future will not be less than they were in the five years above named. In our opinion they will be much greater. We may therefore expect that, if the bill we report shall become a law, and it be held that the earnings of the non-subsidized as well as the subsidized portions of the road are to be taken into account (which is, as we understand, one of the questions now in litigation), the 5 per cent. to be paid to the government in the future, and immediately applicable to reimburse the government, will not be less than the sum aforesaid, $331,481 annually. If the earnings of the non-subsidized portions of the road be omitted, it may not exceed $250,000.

HALF TRANSPORTATION ACCOUNT.

We think that the half transportation account of this company, in the future, immediately applicable to reimburse the government, may be safely estimated at $200,000 per annum. The account in the past warrants this estimate. It is more probable that this estimate is too low than that it is too high.

Estimating the 5 per cent. of net earnings and half the transportation account, in the future, at $500,000, in round numbers, we propose that the other half of the transportation account, say $200,000, shall be paid into the sinking-fund, and that the company be required to pay into the same the further sum of $1,200,000 annually. This would require an annual payment to the government and sinking-fund, according to the foregoing estimates, about as follows:

| | | |
|---|---|---|
| 5 per cent. of net earnings, payable under existing law, say | | $300,000 |
| One-half transportation account, payable under existing law, say | | 200,000 |
| | | 500,000 |
| Into the sinking-fund: | | |
| One-half transportation account, say | $200,000 | |
| Cash | 1,200,000 | |
| | | 1,400,000 |
| Total | | 1,900,000 |

Being about the same amount that the bill we report requires of the Union Pacific.

That the company can make these payments and have a surplus sufficient for handsome dividends to its shareholders is easily demonstrated from the facts already stated. But the same thing is shown more concisely by its statements of profit and loss in the directors' reports for 1875 and 1876 to the stockholders.

By the report for 1875 it appears that, after paying all expenses and interest, the company paid to its shareholders dividends amounting to 10 per cent. on the nominal amount of their stock; amount paid, $5,427,550, and it had a surplus of $10,305,953 left.

In 1876, after paying all expenses and interest, it paid dividends amounting to 8 per cent. on the nominal amount of the stock; amount paid, $4,342,040, and had a surplus of $10,265,589.27 left. If we take these two years as a guide for the future—and we think that we may safely do so—the annual amount that will be divided among the shareholders, should no sinking fund be created, will be 9 per cent. on the nominal value of the stock, $4,883,795.

If the bill we report become a law, this amount would be diminished by the amount required to be paid into the sinking fund, say $1,400,000, leaving $3,483,795, after the payment of all expenses and interest and the payments into the sinking fund, to be divided among the shareholders, being $6\frac{4}{10}$ per cent. on the nominal value of their stock.

Even were the earnings of the non-subsidized roads omitted—which, in our opinion, ought not to be done in estimating the ability of the company to comply with the requirements of the bill—it would still be able to divide from $4\frac{1}{2}$ per cent. to 5 per cent. among its stockholders—a dividend that comparatively few roads in the United States are able to make.

On this subject, see report for 1877 of the Secretary of the Interior, pp. xxxi, xxxii, and xxxiii.

From the foregoing statement it will be seen that after giving said companies credit for 5 per cent. of their net earnings and one-half their account against the government for transportation, it is estimated that their indebtedness to the United States will amount, at maturity, to about $122,000,000; add principal of first-mortgage bonds, $55,000,000, and we will have due fully $177,000,000.

To secure this we have 2,000 miles of road, or 1 mile for every $88,500. No one pretends that this is adequate security for the debt. The officers of the roads admit it is not, while many railroad experts claim that a better new road could now be built for $25,000 a mile. The stockholders have failed to create, voluntarily, any sinking fund for the payment of these debts, and are annually distributing from six to twelve millions of dividends among themselves, and have boldly warned us that when *they* have grown rich out of its incomes the road, like a gold-mine robbed of its ore, may be turned over to the first-mortgage bondholders for *their* debt.

The duty of Congress to protect the government and the people from such threatened loss by every lawful means in its power is too plain to admit of argument. The only question is, What can we do?

### *The power of Congress.*

Railroads, as artificial arteries of trade, have surpassed their predecessors, canals, in importance, and have become the rivals of rivers, the great natural highways on water, and the Pacific Railroad has been called the Mississippi of the East and West.

The *policy of granting* governmental aid to the building of a railroad

The gross earnings of the road, less the operating expenses, for the years 1872 to 1876, both inclusive, as stated in the reports of the directors to the stockholders, were as follows:

| | |
|---|---|
| 1872 | $6,952,361 73 |
| 1873 | 7,694,681 46 |
| 1874 | 8,342,898 76 |
| 1875 | 9,177,882 09 |
| 1876 | 9,137,004 73 |
| Total for five years | 41,504,828 77 |
| Average annual net receipts | 8,300,965 75 |

If we deduct the interest upon the first mortgage bonds, as well as the operating expenses, from the gross receipts, the account for said five years would stand as follows:

| | |
|---|---|
| Gross receipts, less operating expenses | $41,504,828 77 |
| Deduct 5 years' interest on first-mortgage bonds, $1,671,340.80 × 5 | 8,356,704 00 |
| Not earnings for 5 years | 33,148,124 77 |
| Average annual net earnings | 6,629,624 95 |

5 per cent. on which is $331,481.

We think that the net earnings of the road in the future will not be less than they were in the five years above named. In our opinion they will be much greater. We may therefore expect that, if the bill we report shall become a law, and it be held that the earnings of the non-subsidized as well as the subsidized portions of the road are to be taken into account (which is, as we understand, one of the questions now in litigation), the 5 per cent. to be paid to the government in the future, and immediately applicable to reimburse the government, will not be less than the sum aforesaid, $331,481 annually. If the earnings of the non-subsidized portions of the road be omitted, it may not exceed $250,000.

## HALF TRANSPORTATION ACCOUNT.

We think that the half transportation account of this company, in the future, immediately applicable to reimburse the government, may be safely estimated at $200,000 per annum. The account in the past warrants this estimate. It is more probable that this estimate is too low than that it is too high.

Estimating the 5 per cent. of net earnings and half the transportation account, in the future, at $500,000, in round numbers, we propose that the other half of the transportation account, say $200,000, shall be paid into the sinking-fund, and that the company be required to pay into the same the further sum of $1,200,000 annually. This would require an annual payment to the government and sinking-fund, according to the foregoing estimates, about as follows:

| | | |
|---|---|---|
| 5 per cent. of net earnings, payable under existing law, say | | $300,000 |
| One-half transportation account, payable under existing law, say | | 200,000 |
| | | 500,000 |
| Into the sinking-fund: | | |
| One-half transportation account, say | $200,000 | |
| Cash | 1,200,000 | |
| | | 1,400,000 |
| Total | | 1,900,000 |

Being about the same amount that the bill we report requires of the Union Pacific.

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to the Pacific was developed soon after our acquisition of territory from Mexico, and three routes were surveyed, under orders of the Secretary of War, for that purpose. Sectional jealousies prevented the adoption of either of these routes prior to the war of secession, but during that struggle the necessity for preserving the Union, and the danger apprehended from foreign powers, hastened the consummation of this project.

In the act of 1862 large grants of land and loans of credit were made to the Union and Central Pacific companies for the purpose of constructing a railroad from the Missouri River to the Pacific Ocean; and chartered privileges were granted, upon condition that the government should have a first mortgage for the repayment of its money, and that 5 per cent. of the net earnings, and the whole of the transportation account of said roads, should be annually applied to the payment thereof, with the proviso that "Congress may at any time, having a due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act." These words either meant something, or they meant nothing. If, as is now contended by some, no addition, alteration, or amendment can be made to or of this act, so far as the same relates to the loan of money therein provided for, without the consent of the corporations, then these words meant nothing, for *every* charter may be amended, and every contract may be altered, without original stipulation therefor, provided it be done with mutual consent of the contracting parties.

Prior to the enactment of this charter, the courts had held that a charter was a contract, and that its terms could not be altered by the legislature without the consent of the parties, unless the power so to alter had been reserved in the act. With a knowledge of these decisions before it, Congress passed this act, and it is to be presumed that it intended what it said, namely, that Congress *should* have power, at any time, to "add to, alter, amend, or repeal" the same, provided always the purpose of the act remained unchanged. The limitation that such power should be exercised with "a due regard to the rights of the companies" is a clear intimation of the legislative belief that in the absence of such limitation a subsequent Congress might make any alterations it saw fit, without any such "regard to the rights of the companies." That Congress has power to amend this act is evident from the fact that it has already amended it without dispute. This was done at the instance and solicitation of the corporations, and conferred additional benefits upon them, in 1864, by making the government a second mortgagee, and giving it but one-half its annual transportation account.

In this amended act the same power to "alter, amend, or repeal" was retained, while the limitation, "having a due regard to the rights of the companies," was stricken out; but no words were used which indicated any necessity for an acceptance of these amendments by the corporations. It was not a proposal for a treaty; it was a law. This act of 1864 lessened the security of the government for the repayment of its loan, by placing it in the position of a second instead of a first mortgagee, but increased the power of Congress over it by striking out said limitation. The security was deemed ample at the time, and if the affairs of the corporations were administered in good faith, might be so still; but subsequent action of the directors and stockholders renders it highly probable, if not certain, that the security is insufficient, and that if left to their uncontrolled discretion it may prove utterly worthless. This bill proposes to make that security more certain, upon the same principle that the bonds of public officers, mail-contractors, and of all parties

who enter into obligations to perform any duty to the government, may at any time be required to be made more secure.

But, it is said, the loan of money was a separate and independent contract, and that any alteration of this act of Congress which affects the loan of money therein provided for is a violation of the contract and a most serious usurpation of unconditional power. The loan of money was the fundamental idea of the charter; without this it would have been fruitless, and the repayment of that money was secured in the act and nowhere else. To say that the power to amend extends to everything in that act except the right to make the repayment more secure, if necessary, is to violate every rule of legal construction. The loan of money without interest was the foundation-stone of this work, and the power to alter and amend was the main security reserved by the government to insure its proper completion.

Let us suppose that the act of 1862 had remained unchanged; that the government was the first mortgagee, and that private capitalists held the second-mortgage bonds, and that they were here now appealing to Congress for such general legislation as would protect them against the threatened destruction of their security.

Law is a progressive science, and it is the object of successive legislatures so to amend the laws as to meet the ever-varying wants of society. When debtors were found disposed to make way with their property with a view to defeat their creditors, the remedy by attachment was given. When it was found that this remedy was insufficient, because it applied only to past-due contracts, it was extended by statute to apply to debts not due, and the law, when made, was applicable to past as well as future contracts. And yet this additional remedy was no violation of the obligations of the contracts.

Remedies in chancery have been extended by statute in the same way, and in the State of Mississippi a writ of sequestration may issue to prevent the removal of crops from the State until the laborer's claims for unfinished services are satisfied. Receivers in chancery may now be appointed to take possession of railroads for the benefit of mortgagees, when the bonds are due; but there is no adequate remedy for bonds not due.

If the legislature should pass a general act that would extend the remedy by receivers to debts not due, upon a proper showing as to the danger of irremediable loss, this would be no violation of contract. If Congress, under its power to alter and amend these railroad charters, should pass the very bill here recommended in the interest of private bondholders, who were about to be swindled out of their money, and had no adequate remedy, because their debts were not due, it would be but an act of justice and good faith. The maxim that "there is no wrong without a remedy" is true in spirit, but not in fact; and it is the duty of the legislative branch of every government to see that "there shall be no wrong without a remedy."

While Congress has the power to alter and amend, as between itself and the corporations, this charter-contract, should it see fit, a fair consideration of this bill will show that its provisions relate to more efficient remedies for the enforcement of said contract, and not to any fundamental alteration thereof.

The original act contemplates that the road shall be repaired and kept in good working order. If Congress should have reason to apprehend that the stockholders would waste or misappropriate the funds of the road and permit it to go to ruin, we presume no one will doubt the power of Congress so to alter and amend this act as to compel such duty

to be performed; and we can see no good reason why any alterations and amendments should not be made that may be necessary to insure the discharge of every other duty imposed upon the corporations by this act, including the duty of providing for the payment of its mortgage debts. These acts of 1862 and 1864 must be construed together as an entirety, and the power to alter, amend, and repeal, extends to each and every portion equally. The power to amend the contract of charter is admitted, but the power to amend the contract of loan, embraced and set out in the same *charter*-contract, is denied. This is a refinement of dialectics too astute for ordinary minds. It is a maxim in law that a contract cannot exist partly in parole and partly in writing; and we think it equally inconsistent that a written contract can be binding in part and not in the whole, or that it may be altered in part but not in the whole.

The decisions which pronounced a charter a contract did so when there was no clause in it granting a loan of money, and such feature in this railroad charter does not make it any more or any less a contract, nor render it any more or any less amenable to the power of Congress to "add to, alter, amend, or repeal" it.

With these views we concur in the wisdom of this bill, and recommend its passage.

45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 430.

# THE PACIFIC RAILROAD ACTS.

MARCH 22, 1878.—Recommitted to the Committee on the Pacific Railroad and ordered to be printed.

Mr. CHALMERS, from the Committee on the Pacific Railroad, submitted the following

## REPORT:

[To accompany bill H. R. 3999.]

*Your committee, having had under consideration the bill (H. R. 2608) declaratory of the meaning and intendment of the fifteenth section of the act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean,'" beg leave to report as follows:*

The language of the section to be construed is as follows:

SEC. 15. *And be it further enacted*, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line; and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others; and it shall not be lawful for the proprietors of any line of telegraph authorized by this act, or the act amended by this act, to refuse or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured, for each offense, the sum of one hundred dollars, and such other damages as he may have suffered on account of said refusal or failure, to be sued for and recovered in any court of the United States, or of any State or Territory of competent jurisdiction.

Under this section it is claimed by the Kansas Pacific that it is entitled to have an absolute mileage prorate for passengers and freight with the Union Pacific over its road from Cheyenne to Ogden. The Union Pacific claims that, inasmuch as the cost of construction and of operation of its road was and is greater than that of the Kansas Pacific, it should be permitted to charge more than the Kansas Pacific; that the statute secures equal advantages to all the roads mentioned in the act, and that an equitable prorate demands that cost of construction and operation should be considered. To this the Kansas Pacific replies that if anything else than mileage is to be considered, then the cost of fuel, cross-ties, water, and all other items that go to increase or lessen the expenses of railroad operation should be taken into the account. The Union Pacific presents a calculation showing that the cost of operating its road west of Cheyenne is double the cost of operation east, and that therefore it should be allowed twice as much for carrying a passenger or freight from Cheyenne to Ogden as it receives for the same passenger or freight from Omaha to Cheyenne, and therefore it should be allowed to make against the Kansas Pacific the same discrimination that it makes against the eastern half of its own road.

If the committee was disposed to admit the correctness of this position, it would nevertheless be compelled to declare that the Union Pacific had violated even its own construction of the statute by its arbitrary rates.

The Kansas Pacific claim that the calculations of the Union Pacific, as to the extra cost on the west half of their road, is extravagant, and have presented a scientific calculation in reply, which your committee files as an exhibit to this report without expressing any opinion on this point. Your committee would, however, state that we find inequalities in the cost of operating many other lines which are connected by through routes, and that we do not find any allowance made on their tickets for this difference. The Baltimore and Ohio and the Pennsylvania Central have very heavy gradients and curvatures, and we do not find any allowance made to them by connecting lines on this account.

The engine which starts from Cairo to New Orleans can draw but fifteen cars on the upper end, while it can draw fifty cars on the lower end of its line. The Boston and Albany Road, upon which in many places an engine can draw but ten cars, connects with the New York Central, upon which an engine draws forty cars, and yet we cannot find that anything is allowed on through tickets on this account, nor can we find that the Union or the Central Pacific in their through rates with outside connecting lines have been allowed or have claimed anything on account of gradients and curves in their roads. But inasmuch as the committee is divided in judgment upon this question, we do not express any opinion as to whether the rates should be based upon mileage alone, or whether other matters should enter into the calculation to make up an equitable rate, and we deem it the more necessary, on account of our differences of opinion, that this question should be referred to a railroad expert as hereinafter proposed. The argument on this case has taken a very wide range, and many questions of great delicacy and interest to the country have been discussed, and while the ruthless power and extortion of one company have been exposed, the efforts of others to combine with it to oppress the people have been equally demonstrated, and the result is that we are convinced not only as to the power but the duty of Congress to interfere to protect the interests of the citizens.

## THE CAUSE OF COMPLAINT.

It is charged and proved that the Union Pacific charges as much for freight and passengers from Cheyenne to Ogden as it does from Omaha to Ogden, although there is a difference of 516 miles in the distance. This is admitted by the Union Pacific; but it is said this is not discrimination, because it treats all the branches alike. The facts, however, show this to be untrue. The Sioux City Road connects at Fremont, only 40 miles west of Omaha, and its passengers are charged Omaha rates. The Burlington and Missouri Road connects at Kearney Junction, 200 miles west of Omaha, and its passengers are charged Omaha rates; thus discriminating against the latter in favor of the former. The Kansas and Denver Pacific connects at Denver, 516 miles west of Omaha, and here again Omaha rates are charged, thus discriminating against the latter in favor of the two former branches, as well as in favor of what is now known as the trunk line, but which was and is, in comtemplation of law, but a branch as far west as the one hundredth meridian. In the general operation of railroads, points at which two roads connect enjoy the advantage of competition, and lower rates are allowed than from other points; but in this case the rule seems

to be reversed. The manifest object of this is to cut the branches off from the benefits of all through business, and that result has been accomplished. On the 5th of August, 1875, a general notice was published that on and after 1st September, 1875, through tickets over the Kansas Pacific, by way of the Union Pacific, would be withdrawn from sale. That was done on account of the unjust discrimination of the Union Pacific, and the sale has not been resumed. Through business of all kinds was then lost to the Kansas Pacific, and the same is true as to the other branches.

In fact these branches, constituting as they do part of the same system or family of roads, have not received at the hands of the Union Pacific the advantages of connection guaranteed by Congress to outside roads by the fifteenth section of the act of 1862, much less the advantages conferred upon them by the act which created them "one continuous and connected line." On the contrary, the Council Bluffs, Saint Joseph and Omaha Road upon the east, and the Colorado Central upon the west, companies outside of the Pacific system, have been fostered and used by the Union Pacific to utterly destroy the Kansas Pacific. This unlawful course of dealing on the part of the Union Pacific Company would be indefensible, even if no statutory provision required it to deal with its branches on fair and equal terms.

An example is furnished to our hand from the records of the Treasury Department. In the summer of 1877 war was waging in the extreme northwestern part of our country between the government and the Indians. It had gone hard with our limited and scattered forces. The settlers had been driven from their homes, and they had been massacred by the savage foe. It was necessary to re-enforce the little army there struggling against fearful odds without delay.

On the 4th of July, 1877, the General of the Army ordered the Second Infantry, then stationed at Atlanta, Ga., to Ogden, in Utah, for service in Idaho, and directed that they drop all impediments. On the 5th Captain Grimes, depot quartermaster at Saint Louis, was directed to arrange for transportation from that city west. On the 7th an order was issued that the regiment proceed to San Francisco; thence to the theater of service.

The Kansas Pacific offered to transport the command for $5 less per man than the Union Pacific, and this was a saving to the government of over $3,000. Notwithstanding this, Captain Grimes hesitated to intrust this service to the Kansas Pacific, and he exacted from it the guarantee of private parties as security that the transportation should be rendered without delay. The reason for this hesitation to avail himself of this saving to the government of $3,000 he states, in his letter of November 5, 1877, to the Quartermaster-General, to be his "fear of delay at Cheyenne and other obstacles that the Union Pacific Railway might throw in the way" of the urgent military necessity for the speedy transit of the command.

The regiment started on the Kansas Pacific and proceeded with due dispatch to Cheyenne. There it was disembarked from the Kansas Pacific train, and officers, men, baggage, equipment embarked again on the Union Pacific train and forwarded to San Francisco. When the accounts of the several companies came to be adjusted at the Treasury Department, for the services rendered by them respectively, it was found that the Union and Central Pacific Companies charged and claimed to be entitled to receive, out of the sum to be paid for the transportation under the contract with the Kansas Pacific, $100 per man from Cheyenne to San Francisco, whereas the regular through first-class fares charged

by those two companies from Omaha to San Francisco is $100 per passenger. The companies demanded, and they are now seeking to obtain, their full Omaha rates for this transportation from Cheyenne, 516 miles less distance. And Captain Grimes, in consequence of this demand, in his own apportionment of the sum to be paid by the government, among these companies, allowed to the Kansas and Denver Pacific, for 745 miles, but $11 per man, and to the Union and Central Pacific, for 1,400 miles, $89 per man.

There is scarcely a railroad in this country, built with private capital, which would dare to throw obstacles in the way or cause any delay in transporting government troops under such circumstances, even if a rival line was used part of the distance. If the railroads of this system, built by government bounty, can throw obstacles in the way of the transportation of troops in time of war to gratify their hostility to one another and their selfish passion to absorb all the business of the country, and erect themselves into a dominating monopoly, the time has come to teach them the lessons of patriotism in a vigorous way.

## MODE IN WHICH THE UNION PACIFIC RAILROAD IS REQUIRED BY LAW TO BE OPERATED.

These companies are required to operate their roads in harmony by the most positive and stringent provisions of law. To bring out the full force of those provisions, it is important to take a survey of the acts and the scheme which is laid out in them. The first act was passed in 1862, and provided for a trunk road beginning on the 100th meridian, which is 240 miles west of the Missouri, and running west to the western boundary of Nevada. This was to be built by the Union Pacific Company which was incorporated in the act. One branch was to begin on the Missouri River, at the mouth of the Kansas, and run to the initial point of the trunk, and is now known as the Kansas Pacific. Another was an extension of the Hannibal and Saint Joseph Railroad to be built by that company, and was to connect either with the branch first mentioned or the branch next to be mentioned. A third was to commence on the western boundary of Iowa, and run to the initial point of the trunk, and was to be built by the Union Pacific; and a fourth was to commence at Sioux City, in Iowa, and connect with the branch last mentioned, or the trunk; it was to be built by the Union Pacific. Under the act of 1864, that company was released from building the Sioux City branch, its construction being provided for by a State corporation. Under that act, also, another branch was provided for, it being an extension of the Burlington and Missouri River Railroad, of Iowa, and was to begin at the point where that road struck the Missouri River, and run to a connection with the trunk, or the Iowa branch of the Union Pacific. Such was the general scheme of this system of roads.

The utmost care was taken by Congress to consolidate these several roads into a harmonious, complete, and unified system.

*First.* It was provided in section 12 of the act of 1862, that "the track upon the entire line of railroad and branches shall be of uniform width." Then in every section providing for a branch, it was required to connect with the trunk or one of the branches. The uniformity of the language used in the several sections is noticeable. In the 9th section, the Kansas branch is required to build its road "to meet and connect with the trunk." In the same section the same words are used in respect of the Central Pacific of California. In the 13th section, the words in respect of the Hannibal extension are "meet and unite." In the 14th section

the words in respect of the Iowa and Sioux City branches are "form a connection." And so on throughout all the legislation on the subject. We thus have a uniform gauge for all the roads, and connection of their tracks. The object of this is stated in section 12 to be, "so that cars can be run from the Missouri River to the Pacific Ocean."

*Secondly.* The most absolute equality was established among all these companies. In the first eight sections provision is made for the trunk, the grants of lands and bonds, of franchises, power, and privileges; and the conditions, limitations, duties, obligations, and liabilities are all then distinctly prescribed. In the succeeding sections the branch companies are dealt with, and the language in respect of each one is that it shall build its road "on the same terms and conditions in all respects" as the Union Pacific was to build the trunk. Under those terms the branch companies have received an equal amount of bonds and lands, assumed and exercised the same powers and privileges, and been subjected to the same duties. One renders no more or higher or other service to the government, and none receives any more compensation or subsidy or power than the other. All are on the same footing "in all respects."

*Thirdly.* By the 10th section one company was authorized to build the road of another company in case of default on its part; and by section 17 all the property and rights of every kind of *all* the companies were forfeited if each one of the roads were not constructed by a certain day. The object of these two extraordidary provisions was to assure with absolute certainty the complete construction of the whole system of works.

*Fourthly.* To these several requirements which perfected the physical structure, in order that cars might be run from one road to the other, was superadded a duty in respect of the operation of the several parts as one consistent, united, harmonious whole. That duty is defined in section 12 of the act of 1862, in these words: "The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as *one connected, continuous line.*" In the 15th section of the act of 1864 the same provision is repeated, with this addition: "And in such operation and use to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of either of the others." What Congress meant it is easy to see. It was that each branch, the peer of every other branch, and of the trunk as well, should be a part of a great line of railroad, stretching across the continent, yielding its due share of service to the public and the government, receiving its due share of compensation, and giving to and taking from the other companies equal advantages and facilities in all respects which it provided for itself, as if all were parts of one line of road. Thus the road starting at the mouth of the Kansas and running to Cheyenne, and the road from Cheyenne running thence west, were united together as "one continuous line."

The courts of the United States, first the circuit court for Iowa, and then the Supreme Court, in what is known as the Bridge case, reported in 1 Otto, 343, distinctly hold that the words "one continuous line," as used in these acts, mean trains and cars run from terminus to terminus. If the Union Pacific runs its trains and cars from Omaha, through Cheyenne, to Ogden, without change, then, in order to afford to the Kansas branch equal facilities and advantages as to rates, time, and transportation, the trains *and cars of* that company must not be subjected to the

delay or inconvenience of a change or transfer at Cheyenne, but be likewise run through to Ogden. This does not necessarily require that the Kansas Company shall use its own motive power on the Union Pacific nor have separate trains over the latter company's road. But the two trains, each coming from the east and meeting at Cheyenne, may then be consolidated and go forward together. This is done on many of the great roads of the country with ease and in perfect harmony, and is done by the Union Pacific with the Colorado Central, an outside road which intersects with it at Cheyenne.

When the Second Infantry, having passed over the Kansas Pacific, reached Cheyenne, it was the right of the government to have the same cars in which the command was brought there carried forward over the Union Pacific without change or delay. And the transfer which that company required to be made there was perhaps one of those obstacles which Captain Grimes feared.

2. The duty resting on the Union Pacific to operate its road with the Kansas branch as one continuous line, affording to it the same advantages and facilities which it provides for itself, implies still further that such a reasonable and just apportionment of its through rates be made between the different sections of its road as puts the branches on an equal footing with it. It is contended, as before stated, on behalf of the branches, that the law requires that this apportionment should be based on the single element of distance traversed, or mileage prorate, as it is called. On the other hand, it is contended, on behalf of the Union Pacific, that the apportionment should be based on all the elements involved in the cost of maintenance and operation of different sections of its road, or equitable prorate, as it is called. Your committee is of opinion that this question should be left to the judicial tribunals. But an equitable prorate, as well as mileage prorate, forbids the system of arbitrary charges now maintained by the Union Pacific. It requires, in the terms of the statute, that each branch be operated with the main stem as one continuous line, with equal advantages and facilities in respect of rates, as well as of time and transportation. If, as is claimed, it costs more to operate the west half of the Union Pacific road than it does the east half, then, on the basis of equitable prorate, allowance should be made for the increased cost, but no more. All the circumstances—grades, curves, fuel, ties, iron, &c.—are to be duly counted in the calculation, and upon them all a fair apportionment must be made. To charge freight from Fremont, Kearney Junction, and Cheyenne Omaha rates is obnoxious to the charge of the very grossest discrimination. To charge for the transportation of troops embarked on the Union Pacific at Cheyenne as much as if they had embarked at Omaha, and been carried over the 516 miles to Cheyenne, is a glaring injustice which is utterly indefensible, and no defense has been attempted.

## THE OBJECT OF THE ACTS.

Attention is called to the object of this legislation. It is declared in several different clauses of the acts, as if Congress were solicitous to impress upon them its purpose in enacting them. Without repeating all the clauses, reference is made to the seventeenth section of the act of 1862, where the object is distinctly stated to be "to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times, but particularly in time of war, the use and benefit of the same for postal, military, and other purposes."

These public purposes, however, were not to be accomplished by the construction of a single line of road and telegraph, but by this *system* of several roads united together in mechanical connection and harmonious operation. By each, the several lines of commerce crossing the country were to be conducted to the one great trunk road, and carried onward to its destination. Each was made the equal of every other for this transcontinental service, and all were to share alike in its rewards. Such a purpose alone justifies the enormous subsidies of lands and bonds to each branch road—$6,000,000 to the Kansas Company, $1,600,000 to the Hannibal extension, $2,500,000 to the Iowa branch, and $1,600,000 to the Sioux City branch. Underlying these grants, and the reason for making branches at all, is the great public purpose of giving to the several sections of the country, one equally with the other, the benefit and advantage of its own branch, and to the government the benefit and advantage of that branch most convenient for its use on any occasion.

## THE POWER TO AMEND, IN ORDER MORE PERFECTLY TO SECURE THESE OBJECTS.

Enough has been already said to show that these objects have not been attained heretofore, and the attitude of the Union Pacific Company in this controversy shows that it does not purpose to assure those objects. Its counsel insists that, under the doctrine of the Dartmouth College case, a charter is a contract, the obligation of which cannot be impaired by the legislature; that Congress has not the power to amend the acts so as to accomplish those objects.

That might be so (although the question is open) if Congress, in its solicitude to put those objects beyond hazard, had not reserved to itself the power "to add to, alter, amend, or repeal" these acts. It has been said by judges and courts of very great eminence that the power of amendment is not without limit. This general expression has given rise to much discussion as to the proper limits of the power. But it is well settled in a long series of cases in the United States Supreme Court that the power may be exercised to almost any extent to carry into effect the original purposes of the act. (Holyoke Co. *vs.* Lyman, 15 Wallace, 500; Miller *vs.* The State, 15 Wallace, 498; Peik *vs.* Chicago & N. W. R. R. Co., 4 Otto, 164.) The last expression of that court is in the case of Ohio *vs.* Wright, decided at the present term, but not yet reported. Mr. Justice Swayne, speaking for the court, says that the power of amendment, even under such a clause as we have here, is not without limit. He does not state those limits in precise language, but he furnishes instances of extreme cases on the one side and the other from which it is easy to see what the limits are. One instance is an amendment requiring a railroad company to build a bridge in which it could have no interest in any way whatever. The reason there is that the amendment does not carry into effect the original purposes of the grant, but, on the other hand, defeats or substantially impairs that object by diverting the company's funds to other and alien purposes. The instance put on the other side was a case which required a railroad company to build a station, pull up its tracks, relay them, &c., all at very great expense. Here the original purpose of the grant was not impaired, although the company received no benefit from the work required to be done.

Regard being had to the great public purposes of these acts, it is competent for Congress so to amend them as to secure the operation of the roads all together as one continuous line, by through cars and on a fair basis of rates. Accordingly, Congress may by amendment of these acts

advance their objects by modifying and enlarging the rules governing the operation of these roads. It may, as was done in one case in Massachusetts and approved by its learned supreme court, require the Union Pacific Company to build ample station buildings for the accommodation of the branches at the points of their connections, and require the tracks to be taken up, removed, and relaid, so as to facilitate transfers of passengers and freights. It may require it to provide proper cars, engines, men, and other facilities for conducting the business common to it and its branches. It may require it to delay its own trains certain lengths of time so that trains of the branches may make connections. It may fix the apportionment of its rates on such basis as to it shall seem just. So long as it does nothing which impairs the objects of the acts, it is within the limits of its power. This is perfectly just and right, for it is precisely what was agreed to between the companies and the government when the act was passed by Congress and accepted by the roads. But, if there was any doubt about this, there can be no doubt as to the power of Congress to order the remedies, and that is all that this bill contemplates.

### THE PRESENT REMEDIES INADEQUATE.

The remedies now provided do not meet the case—they are dilatory. No matter whether the criminal procedure be resorted to, or suits for damages under the act of 1874, or for mandamus under that of 1871, or for injunction upon the general principles of equity, from two to six years must elapse before any conclusion is reached, and, meanwhile, the public and the government are deprived of what these laws were intended to secure.

2. Suits, of whatever nature, to enforce these duties, as they must be instituted and prosecuted by, so they must remain under the control of, private parties. They are liable to be perverted by such parties, a record constructed not fairly presenting the true question, argument made not truly informing the intelligence of the court, and a judgment reached partial or covering but half the case. It is most unsafe to intrust to private litigants the vindication of the rights of the public and of the government.

3. A judgment in favor of one party cannot be enforced in behalf of another party. If damages be awarded to A under the act of 1874, it does not avail B, who must bring his own suit for his own case. If mandamus be prosecuted to judgment by A, he may be satisfied by some trivial reward, and B is left unprotected. If injunction be sued out, the plaintiff only can invoke the process of contempt for its disobedience. The judgment between one company and A is not an estoppel between it and B, nor between A and another company. Distinction may be nicely drawn by astute counsel between a case decided and a case being prosecuted, and the result is remote, uncertain, and ever vanishing.

4. As the law now stands it is quite possible for these companies to agree to such abrogation of its rights by one, and compensation therefor by another; that between them the possibility of suit is prevented, while the public interests are sacrificed, and the government service put in the care and at the mercy of companies which are only too apt to regard their own profit and disregard their public duty.

### A COMMISSION.

In the course of the operation of these roads as required by law many matters of disagreement must present themselves, and this even if they

are disposed to observe their statute obligations. It must especially be so, if either is indisposed thereto. The unwilling member of the system may, at a thousand points, create difficulties which may effectually destroy the system. Such differences are not to be harmonized by a general statute, or by such a party. It is necessary, therefore, that some common arbiter, some active agent, should be provided for the settlement of all such differences, selected by some authority outside of the companies, animated by a desire to accomplish the objects of these acts, informed by an intelligent knowledge of the law and of railroad management, and guided by a wise regard for justice between the several companies, the public and the government. Such an arbiter would soon restore harmony to these hostile companies. But he must be armed with sufficient power to prescribe the rules and regulations for the operation of the several roads, to observe their enforcement, and to settle disputes. Rules and regulations prescribed by him and supervised by his official superior should be obeyed until the courts, upon proper complaint, disapprove of them as unauthorized by law. This is essential, for, if their enforcement may be enjoined, simply by giving bonds, until final trial and decree, the mischief would continue scarcely abated in any degree.

### PUNISHMENT FOR DISOBEDIENCE.

But all such machinery will prove utterly inefficient unless some severe and summary punishment be prescribed for the disobedient.

One form of punishment is by forfeiture of all franchises, but that remedy would not compel the performance of its duty by the company, but *prevent* its performance by destroying the company. The point to be attained is the operation of all these roads according to law. To extinguish the life of one company is to render the point unattainable. The object is better sought by coercing the delinquent through its property. And this is not to be done by fines or punitive damages or judgments of any kind. So long as the Union Pacific can absorb all the transcontinental business and make for itself $2,000,000 or $3,000,000, which should go to the branches, it can well afford to pay any fines or damages or judgments which may be levied or recovered against it.

### THE SEIZURE OF PROPERTY.

The only sufficient remedy is the seizure by competent authority of the property of the delinquent company upon summary process, with the right reserved to such company to restrain its enforcement by injunction out of chancery. This process is justified by the practice of the government from the earliest times. In 1813 a law was passed which still survives and is frequently enforced, providing that if a public officer receives public funds for which he does not duly account to the Treasury, the First Comptroller may state the account and certify it to the Solicitor of the Treasury, who may issue a warrant to the marshal of the district in which the officer resides, directing him to seize and sell the goods and chattels, lands and tenements of the officer and of his sureties, and sell them upon a short notice. So far there is no proceeding in court, but, if the officer feels aggrieved, he may apply to the United States judges for injunction to restrain the levy of the warrant or the sale of his property. So, too, the collector of customs may seize and sell on short notice goods imported from abroad in violation of the customs laws, *and that* without any judicial inquiry. So, too, the

collector of internal revenue may seize a distillery without judicial process, and close it indefinitely. So, too, national banks alleged to have failed to redeem their notes, may be summarily placed in the hands of a receiver by the Comptroller of the Currency, upon an *ex parte* showing to him. These are cases under the Federal jurisdiction and laws. The processes for the sale of property for taxes are referable to the same class.

If the attempt be made to distinguish these cases from the one under consideration because they relate to public officers and public revenue and therefore may be justified by public necessity, the answer is that this Union Pacific Company is a public officer performing the most important public service, and to secure the performance of that service it, too, may be summarily proceeded against. What higher service, calling for more summary process for its efficient performance, can be mentioned than the transportation of mails, troops, and public property! In Murry's Lessee vs. The Hoboken Improvement Co., 18 Howard, 266, the Supreme Court affirms the validity of the laws we have mentioned, and the principles of that case justify the seizure of the property of this company if it will not do its duty.

Another answer is that summary process is frequently used in cases where the delinquent is not a public officer under the police power. Thus in many cases the validity of laws for the seizure and sale of cattle, swine, and dogs running at large, has been sustained. McKee vs. McKee, 8 B. Mon., 433; Gosselink vs. Campbell, 4 Iowa, 296; Hart vs. Mayor of Albany, 9 Wend., 571; Whitfield vs. Longest, 6 Iredell, 268; Blair vs. Hutchinson, 100 Mass., 136. So, too, laws authorizing the destruction of wharves erected even under authority of law (Commonwealth vs. Alger, 7 Cush., 53), and of buildings, to prevent the spread of conflagrations (Parsons vs. Pentergill, 11 Allen, 572), have been sustained.

The police power has received exposition in the License cases (5 Howard, 504), by Chief-Justice Taney, Mr. Justice McLean, and Mr. Justice Grier. In very many cases railroads have been regulated in most important respects by laws against which the objection was made which is urged against the power of seizure of this company. Their grades and crossings, and the apportionment of the expense (in Fitchburg Co. vs. Grand Junction Co., 1 Allen, 552 and 4 Allen, 198), the establishment of flag-stations and erection of station-houses, and fencing of their track (Thorp vs. Rutland Co., 27 Vt., 156), have all been made the subject of legislation which has been sustained by the courts.

The remedy of seizure is summary; it may be arbitrary, but the public necessity is urgent.

If these companies desire to avoid it let them obey the law.

In accordance with these views your committee have prepared a substitute for the bill H. R. 2608, which is herewith submitted, with a recommendation that it do pass.

J. W. THROCKMORTON.
WILLIAM R. MORRISON.
NATHAN COLE.
J. R. CHALMERS.

# APPENDIX.

## *Letter of Mr. E. C. Smeed.*

KANSAS PACIFIC RAILWAY,
OFFICE OF THE CHIEF ENGINEER,
*Kansas City, March* 14, 1878.

ROBT. E. CARR, Esq., *General Manager:*

DEAR SIR: I have examined the arguments made in a pamphlet entitled "Kansas Pacific *vs.* Union Pacific," comparing the eastern half of the Union Pacific Railroad, from Omaha to Cheyenne, with the western half of the same railroad from Cheyenne to Ogden. On pages 83 and 84 of the pamphlet I find the following:

The aggregate curvature east of Cheyenne is 2,504°, west of Cheyenne, 21,080. Maximum grades per mile east of Cheyenne, 35 feet per mile; west of Cheyenne, 90 feet per mile. Capacity of standard engine east of Cheyenne, 22 cars; west of Cheyenne, 9 cars. Proportion of engine expenses to total operating expenses east of Cheyenne, 32 per cent.; west of Cheyenne, 51 per cent. Total operating expenses per train per mile east of Cheyenne, 87 cents; west of Cheyenne, $1.34. It is a fact conceded by civil engineers, that each 21 feet of ascending grade costs as much in operation as one mile of level road; and that 527° of curvature involves an expenditure equal to one mile of straight level road. The total ascent from Omaha to Cheyenne westward, is 5,454 feet, equal to 260 miles of added level road. The total ascent from Cheyenne to Omaha eastward, is 379 feet, equal to 18 miles of added level road. The total curvature is 2,504°, equal to 5 miles of added level road; making the additional road arising from grade and curvature equal to 283 miles. The total ascent from Cheyenne to Ogden westward, equals 6,622 feet, equal to 315 miles of added road. From Ogden to Cheyenne eastward, the total ascent is 8,279 feet, equal to 394 miles of added road. The total curvature is 21,080°, equal to 40 miles of added road. The entire additional road arising from grade and curvature, equals 749 miles, which gives an excess of actual distance, arising from grades and curvature between Cheyenne and Ogden, over between Omaha and Cheyenne, of 466 miles. A very simple calculation, based on these facts, will demonstrate the mathematical and absolutely correct result, that of the through rate from Omaha to Ogden, more than two-thirds is earned between Cheyenne and Ogden; and that to divide that rate equally at Cheyenne, would leave the west half of the road not only without profit, but with an absolute loss. Yet this is the exact demand of the Kansas Pacific.

To refute the assertion, that it is a fact conceded by civil engineers that each 21 feet of ascending grade costs as much in operation as one mile of level road, and that 527 degrees of curvature involves an expenditure equal to one mile of straight level track, I refer to Manual for Railroad Engineers, by George S. Vose, professor of civil engineering in Bowdoin College. Page 35, he says:

Inasmuch as the total resistance offered by any incline depends upon the amount and not the rate of ascent, we may compare lines having different systems of grades by simply making a certain allowance for each foot of vertical rise; or we may determine the number of feet of ascent which shall involve an expenditure of power equal to that required to move the train one mile on a level, and divide the whole ascent in any line by that number; the quotient being the number of miles to be added to the actual distance to get the equivalent horizontal length, or, as it is termed, the equated distance. * * *

The above has been a common mode of equating for grades, and represents a length proportionate to the power expended. But it does not represent a length proportionate to the *cost* of exerting that power, which is what we require. Of the whole expense *of operating a railroad* a few items are directly proportional to the power ex-

erted in hauling the trains; other items are increased, but not to so great an extent, while others are not affected at all. Thus, the fuel used during the ascent of a grade may be taken as proportional to the power exerted; the wear of the rails is more upon a grade than upon a level, though to what extent can hardly be stated precisely. General expenses, such as agents' salaries, insurance, and many others, are not affected at all.

If the grade is not over, say, 25 feet per mile, so that it may be worked by simply increasing the weight of the engines, without augmenting their number, we may assume one-sixth part of the total expense of maintenance and operation to be doubled by doubling the power exerted, in which case, instead of adding a mile for each 27 feet of ascent (or other number, according to the speed), we should add only one-sixth of a mile; or we should multiply the numbers in the third column of the preceding table by 6, as below:

| Speed in miles per hour. | Resistance in pounds per ton. | Grade to double the resistance. | Rise in feet to double the cost of working. |
|---|---|---|---|
| 15 | 9.3 | 22 | 132 |
| 20 | 10.3 | 24 | 144 |
| 25 | 11.7 | 27 | 162 |
| 30 | 13.3 | 31 | 186 |
| 40 | 17.4 | 41 | 246 |
| 50 | 22.6 | 53 | 318 |

Thus, at a speed of 25 miles an hour, for each 27 feet of ascent, we shall consume an amount of power sufficient to move the train one mile upon a level; but, to consume an *expense* sufficient to maintain and operate one mile, we must ascend six times the above amount, or 162 feet.

When the grade becomes so steep as to demand an additional number of engines, the expense is increased more than by the amount stated above; and, therefore, we should multiply the numbers in the third column of the foregoing table by a less number than 6. Probably, for grades from 25 to 50 feet, by 4, would be a sufficiently large multiplier; from 50 to 75 feet, by 3; and, for grades from 75 to 100 feet, by 2.

## EQUATING FOR CURVATURE.

Vose's Manual for Railroad Engineers, page 42:

Taking the operation of the 1,500 miles of railway in Massachusetts as a basis, and adding, for a double expenditure of power demanded by curves 25 per cent. to the cost of the repairs of roadway, engines, and cars, and 100 per cent. to the cost of fuel, we shall increase the whole expense of operating and maintaining the road by about 25 per cent. If, therefore, a mile of road, containing 527 degrees of curvature, demands the exertion of double the power required upon an equal length of straight line, and if the exertion of double power involves 25 per cent. more expense, the number of degrees consuming an amount of *money* sufficient to operate and maintain one mile of road will be $\frac{100}{25}$ of 527, or 2,108 degrees, which is thus the equating number for curvature at a speed of 20 miles an hour. * * *

From the authority quoted, it will be seen that in equating for grades, instead of adding 1 mile to the actual distance for each 21 feet of ascending grade (as was done in the case under consideration), we should add only one-sixth part of a mile for each 27 feet of ascending grade, at a speed of 20 miles an hour; with grades 25 to 50 feet, one-fourth part of a mile; 50 to 75 feet, one-third; and from 75 to 100, we should add one-half mile.

From the same authority in equating for curvature, it will be seen that instead of adding 1 mile of level straight line for each 527 degrees of curvature, we should add only one-fourth of that distance.

Of the grades on Union Pacific Railroad, as given by examining commissioners appointed by the President of the United States, taken from reports and profiles on file in Department of the Interior, at Washington, more than 70 per cent. of the gradients of the whole length of the road do not exceed 50 feet to the mile, and the maximum gradient of 90 feet to the mile is employed on less than 1.5 per cent. of the entire length of the line.

Assuming an average speed of the trains at 15 miles an hour and 22 feet of ascending grade costs as much in operation as one-fifth of a mile of level road, and that 527 degrees of curvature involves an expenditure equal to one-fourth of a mile of straight level road, we get the following results:

DATA.

| | |
|---|---|
| Equating number for gradients | 5 |
| Equating number for curvature | 4 |
| Distance, Omaha to Cheyenne | 516 miles. |
| Distance, Cheyenne to Ogden | 516 miles. |
| Ascent westward, Omaha to Cheyenne | 5,454 feet. |
| Ascent eastward, Omaha to Cheyenne | 379 feet. |
| Ascent westward, Cheyenne to Ogden | 6,622 feet. |
| Ascent eastward, Cheyenne to Ogden | 8,279 feet. |
| Curvature, Omaha to Cheyenne | 2,504 degrees |
| Curvature, Cheyenne to Ogden | 21,080 degrees |

The total ascents and amount of curvature are taken from the pamphlet hereinbefore referred to, pages 83, 84.

OMAHA TO CHEYENNE.

The total ascent westward from Omaha to Cheyenne is 5,454 feet equal to 49.6 miles of added level road. The total curvature is 2,504 degrees, equal to 1.2 miles of added level road, making the additional road arising from grade and curvature, going westward, 50.8 miles, or a total equated length of road from Omaha to Cheyenne, 566.8 miles.

The total ascent eastward from Cheyenne to Omaha, is 379 feet, equal to 3.4 miles of added level road. The total curvature is 2,504 degrees, equal to 1.2 miles of added level road, making the additional road arising from grade and curvature, going eastward, 4.6 miles, or a total equated length of road from Cheyenne to Omaha, 520.6 miles, and the mean equated distance between Omaha and Cheyenne, 543.7 miles.

CHEYENNE TO OGDEN.

The total ascent westward from Cheyenne to Ogden is 6,622 feet, equal to 60.2 miles of added level road. The total curvature is 21.080 degrees, equal to 10 miles of added level road, making the additional road arising from grade and curvature, going westward, 70.2 miles, or a total equated length of road from Cheyenne to Ogden, 586.2 miles. The total ascent eastward from Ogden to Cheyenne, is 8,279 feet, equal to 75.2 miles of added level road. The total curvature is 21,080 degrees, equal to 10 miles of added level road, making the additional road arising from grade and curvature, going westward, 70.2 miles, or a total equated length of road from Cheyenne to Ogden, 586.2 miles. The total ascent eastward from Ogden to Cheyenne is 8,279 feet, equal to 75.2 miles of added level road. The total curvature is 21,080 degrees, equal to 10 miles of added level road, making the additional road arising from grade and curvature, going eastward, 85.2 miles, or a total equated length of road from Ogden to Cheyenne, 601.2 miles, and the mean equated distance between Cheyenne and Ogden, 593.7 miles.

In the following comparisons I shall use the mean equated length for authority. (See Manual for Engineers, by Vose, page 38.)

"The mean equated length of A B is thus 115.35 miles, and the mean equated length of C D is 112.72 miles."

| | |
|---|---|
| Mean equated distance, Omaha to Cheyenne | 543.7 miles. |
| Mean equated distance, Cheyenne to Ogden | 593.7 miles. |
| Difference | 50.0 miles. |

Making the total cost of maintaining and operating that part of the line between Cheyenne and Ogden 9.2 per cent. more than that part between Omaha and Cheyenne.

KANSAS PACIFIC RAILWAY.

*Data.*

| | |
|---|---|
| Equating number for gradients | 5 |
| Equating number for curvature | 4 |
| Distance from one hundred and twentieth mile post west of Kansas City to Denver Junction | 516 miles. |
| Ascent westward | 6,649 feet. |
| Ascent eastward | 2,491 feet. |
| Curvature | 15,654 degrees. |

The total ascent westward from the one hundred and twentieth mile post west of Kansas City to Denver Junction is 6,649 feet, equal to 60.4 miles of added level road. The total curvature is 15,654°, equal to 7.4 miles of added level road, making the additional road arising from grade and curvature, going westward, 67.8 miles, or a total equated length of road from the one hundred and twentieth mile post to Denver Junction, 583.8 miles.

The total ascent eastward from Denver Junction to the one hundred and twentieth mile post is 2,491 feet, equal to 22.7 miles of added level road.

The total curvature is 15,654°, equal to 7.4 miles of added level road, making the additional road arising from grade and curvature, going eastward, 30.1 miles, or a total equated length of road from Denver Junction to 120th mile post, 546.1 miles, and the mean equated distance between the 120th mile post and Denver Junction, 564.9 miles.

If we compare that part of the Union Pacific Railroad from Omaha to Cheyenne, 516 miles, with the same distance on the Kansas Pacific Railway, we shall obtain the following result:

| | |
|---|---|
| Mean equated distance, Omaha to Cheyenne | 543.7 miles. |
| Mean equated distance, 120th mile post to Denver Junction | 564.9 miles. |
| Difference | 21.2 miles. |

Making the total cost of maintaining and operating that part of the Kansas Pacific Railway between the 120th mile post and Denver Junction 3.9 per cent. more than that part of the Union Pacific Railroad between Omaha and Cheyenne.

Again, in comparing that part of the Union Pacific Railroad from Cheyenne to Ogden, 516 miles, with the same distance on the Kansas Pacific Railway, we obtain the following result:

| | |
|---|---|
| Mean equated length, Cheyenne to Ogden | 593.7 miles. |
| Mean equated length, 120th mile post to Denver Junction | 564.9 miles. |
| Difference | 28.8 miles. |

Making the total cost of maintaining and operating that part of the Union Pacific Railroad from Cheyenne to Ogden 5.1 per cent. more than that part of the Kansas Pacific Railway from the 120th mile post to Denver Junction.

From a comparison of the above percentages, it will be seen that there is very little difference in the expense of maintaining and operating these roads; and the difference in the cost of operating and maintaining the different portions of the Union Pacific Railroad is not so great as some may be led to suppose who have not studied the subject.

SUMMARY.

*Omaha to Cheyenne.—Union Pacific system* (see their pamphlet, pages 83 and 84):

| | Miles. | |
|---|---|---|
| Absolute distance | 516 | |
| Add for grade westward | 260 | |
| Add for grades eastward | 18 | |
| Add for curvature | 5 | |
| | | 799 |

*Omaha to Cheyenne.—Correct system by Vose* (see Manual for Engineers, pages 33 to 44):

| | | | |
|---|---|---|---|
| Absolute distance | | 516 | |
| Add for grades westward | 49.6 miles. | | |
| Add for grades eastward | 3.4 miles. | | |
| Mean of both ways | 53.0 miles. | 26.5 | |
| Add for curvature | | 1.2 | |
| | | | 543.7 |
| Difference in the two systems | | | 255.3 |

*Cheyenne to Ogden.—Union Pacific system* (see their pamphlet, pages 83 and 84):

| | | | |
|---|---|---|---|
| Absolute distance | | 516 | |
| Add for grades westward | | 315 | |
| Add for grades eastward | | 394 | |
| Add for curvature | | 40 | |
| | | | 1,265 |

*Cheyenne to Ogden.—Correct system by Vose* (see Manual for Engineers, pages 33 to 44):

| | | | |
|---|---|---|---|
| Absolute distance | | 516.0 | |
| Add for grade westward | 60.2 | | |
| Add for grade eastward | 75.2 | | |
| Mean of both ways | 2) 135.4 | 67.7 | |
| Add for curvature | | 10 | |
| | | | 593.7 |
| Difference in the two systems | | | 671.3 |

Cost of operating west half of Union Pacific over east half. 9.2 per cent.
Cost of operating Kansas Pacific over east half of Union Pacific ..... 3.9 per cent.
Cost of operating west half of Union Pacific over Kansas Pacific ..... 5.1 per cent.

Respectfully,

E. C. SMEED,
Chief Engineer.

45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 620.

# ESTABLISHMENT OF A BOARD OF PACIFIC RAILROAD COMMISSIONERS

APRIL 17, 1878.—Committed to the Committee of the Whole House on the state of the Union, made the special order for May 15, 1878, and ordered to be printed.

MR. WILLIAM W. RICE, from the Committee on the Pacific Railroad, submitted the following

## REPORT:

[To accompany bill H. R. 4399.]

*The Committee on the Pacific Railroad, to which were referred Mr. Crittenden's bill, No. 2608, Mr. Chalmers's bill, No. 3999, Mr. Blair's bill, No. 4117, and Mr. Rice's bill, No. 4118, having considered the same, submits the following report and accompanying bill as a substitute for the above:*

The several bills above named grew out of, and were intended to relieve, the complaints of the branch roads of the Union Pacific system against the Union Pacific, the trunk line of the system, of a violation of the relations established between them by Congress, and of exorbitant charges, unjust discriminations, and general illegal and oppressive treatment.

The Kansas Pacific has represented the branch roads, as complainant, against the Union Pacific, as defendant.

The discussion has been conducted by both parties with great ability, and has been exhaustive to the last degree. It has extended beyond the immediate interests of the nominal parties, and has involved questions of the gravest importance, affecting other systems of roads, rival cities and sections, and the people, not only of the regions traversed by these roads, but of the whole country.

The interests involved are vast, the rights intricate and delicate; the grounds of mutual complaint patent and well defined, and frequently well sustained on either side; the remedy is doubtful, and the right of Congress to apply it, if ascertained, is gravely questioned, if not absolutely denied. It is apparent, therefore, that the questions at issue are surrounded by great difficulty of solution, and that they are entitled to a careful, impartial, and judicial consideration.

### UNION PACIFIC ROADS.

The Union Pacific Road extends, including its easterly branch, from Council Bluffs, on the easterly side of the Missouri, in Iowa, through Omaha and Cheyenne, to Ogden, in Utah. The Central Pacific, with its California branch, extends thence to San Francisco. The Kansas Pacific is the most southerly of the branch roads, extending from the Missouri, at the mouth of the Kansas, by the Denver Pacific, which may be considered a part of it, to its connection with the Union Pacific at Cheyenne.

Next northerly is the Hannibal and Saint Joseph, leaving the Missouri at Saint Joseph, and next, the Burlington and Missouri, at the mouth of the Platte, extending westerly to a junction with the Missouri and Saint Joseph, and thence to a common connection with the Union Pacific at Kearney, while the Sioux City extends from Northwest Iowa down the easterly bank of the Missouri till it connects with the Union Pacific at its initial point, Council Bluffs

## A FAMILY GROUP OF ROADS.

While each of the branch roads was intended to develop and accommodate the country through which it passes, its easterly terminus was fixed with a special view to eastern connections. The Kansas Pacific was connected with the vast systems and interests centering at Saint Louis; the Hannibal and Saint Joseph, and the Burlington and Missouri, were each extensions of eastern lines intermediate between Saint Louis and Chicago; the main line, radiating from Council Bluffs in every direction, was still most intimately connected with Chicago, while the Sioux City opened an avenue between the Northwest and the main line.

Thus, a desire to promote local development, and to afford to different sections and interests, so far as possible, equal facilities and advantages in the great central road to the Pacific, combined in the construction of this system of roads. The scheme involved the settlement of the vast and fertile tracts west of the Missouri, and the realization of Benton's prophecy of a grand national highway binding East to West, over which the commerce of Asia and the Pacific would pass to the eastern centers of wealth and trade.

In executing this great scheme all sections were to be equally protected. The common bounty was contributed alike to the trunk and the branches, and they were all alike to promote the common welfare. Saint Louis, the home of the great Senator, who was the first and ablest champion of the Pacific road, was not to monopolize its benefits, nor was Chicago to be allowed to divert into her warehouses alone the vast traffic of the West. The trunk and the branches were all to be arteries of a common system; the same currents of life and health that passed through one were to flow as freely through all the rest.

The intent is discernible in all the legislation of Congress relating to these roads. The terms, conditions, and privileges relating to the construction of the several roads were interdependent, and the same in bounty and advantage "to all." Equal advantages and facilities were to be enjoyed in the operation of all. Section 15 of the act of 1864 provided "that the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph, for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, *as one continuous line;* and in such operation and use to afford and secure to each *equal advantages and facilities* as to rates, time, and transportation, without *any discrimination of any kind* in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of them."

These roads, therefore, were built, under the patronage and supervision of the government, members of a system, to be operated in harmony and for a common purpose, to wit, "to promote the public welfare." And yet no rivalry has been more hostile and bitter than between them; the public complains loudly of exorbitant and oppressive rates

and charges, and the government, by whose bounty they were built, stands almost, if not quite, a helpless creditor, its interests postponed and endangered by corruption, dishonesty, and reckless mismanagement.

## ALLEGATIONS OF COMPLAINT BY THE KANSAS PACIFIC AGAINST THE UNION PACIFIC.

Passing for the moment the grounds of complaint which the government and the public have against these roads generally, it is well to consider some of the differences between themselves—not to pass upon them, but to inform ourselves as to what measures of relief should be adopted.

We may consider, as already stated, the Kansas Pacific as representing the other branches against their powerful and common enemy, the Union Pacific. It alleges, among other complaints, that the Union Pacific refuses to make convenient connections with it at Cheyenne, the point of junction; that it refuses to operate its road as continuous with that of the Kansas Pacific; and that it discriminates against it in the matter of rates and charges.

It claims that the Union Pacific is bound under the act to provide convenient terminal facilities at Cheyenne; to make running connections; to allow the cars of the two roads to pass from the one to the other so as to avoid transfer of freight and passengers, and to transport freight and passengers from the connecting road at the same rates as it does its own, which should be its lowest average mileage over its whole line.

The Union Pacific denies that it is bound to receive the cars of the other road upon its own, but only to make convenient transfers of freight and passengers. It denies that it is bound to give the Kansas Pacific the benefit of its through rates, but claims a right to charge for all business coming upon its road from the Kansas Pacific local rates from Cheyenne.

While these adverse claims might be readily adjusted between friendly corporations by agreement, the difficulty of any arbitrary decision in favor of the one side or the other is manifest from a slight consideration. The Kansas Pacific claims that the two roads shall be used as *one continuous road;* that it has a right to run its cars and its engines from the Missouri to the Pacific, and quotes the decision of the Supreme Court in the Omaha bridge case in support of this claim.

The Union Pacific replies, that it has been found impracticable for one road to have running powers over another; that the passage of engines from one road to another is inconsistent with the public safety, and is forbidden by statute in many States; that it would not be thrifty or economical management to take the cars from a connecting road and draw them forward with its own trains, as they may chance to come to the point of junction, and that the decision in the Omaha bridge case refers to the operation of sections of the same road, and would not be extended to that of different connecting roads, even of the same system.

The Kansas Pacific claims that as Cheyenne is exactly the middle point of the Union Pacific, its passengers and freight going upon the road at Cheyenne should be transported to Ogden for exactly one-half the charge from Omaha to Ogden.

The Union Pacific replies that the western half of its road was much more expensive in construction than the eastern, and that owing to heavy grades and curves it costs much more to operate and maintain it

than the eastern half; that therefore, if it acceded to the demand of the Kansas Pacific, it would be obliged to do the business coming from that road at an actual and considerable loss, which could not be the intent of the legislation in dispute. Moreover, that it is twenty-five miles nearer from Kansas City to Cheyenne over its road, via Omaha, than through Kansas via Denver, by the Kansas Pacific, and that the Kansas Pacific seeks, and would obtain, unjust advantages in competition for Saint Louis business if it could carry it over its road, easy of construction and maintenance, to Cheyenne, and then force the Union Pacific to carry it to the west at an equal mileage rate based upon its through rates, averaging the one-third expense of the eastern section with the two-thirds expense of the western section.

Between these extreme claims the public suffers. The Kansas Pacific is virtually prohibited from a share of the Eastern business to the West, and seeks compensation in exorbitant rates levied upon Colorado and Kansas, whose interests it should encourage and develop.

It is apparent, from this hasty statement of some of the questions at issue, that they are not fictitious or frivolous; that they are inherent in the management of railroads; that they are almost incapable of solution by legislatures or courts, and yet that, unless settled by friendly compromise or authoritative supervision, they will result in evil to the community and to the corporations, limited only by the ability of the contestants to continue the quarrel, and of the public to suffer its consequences.

Enough was elicited in the hearing, by proof and admission, to show that both parties have violated the intent of the legislation to which they owe their existence; that they have failed to promote the public interest and welfare, as they were intended to do; that they have not only injured each other by improper hostility and rivalry, but have impaired their own means by cutting rates and constructing unnecessary parallel roads, to the danger of their stockholders and of their creditors, of whom the government is the chief. Each party has made a clear case against the other, and a stronger one still of the public against both. Some measures of relief must be devised promptly and efficiently, or the intended results of beneficent and generous legislation will be lost, and agencies created for the best and highest purposes changed into instrumentalities of evil and oppression.

The processes of the courts are too slow, even if they are adequate to the emergency. Congress, which established this great national system of roads, must furnish the necessary relief, that it be not diverted from the public welfare it was intended to promote.

## POWER OF CONGRESS TO INTERFERE.

We are encountered at the outset by a cool denial of the right of Congress to interfere. The argument is:

1st. That these corporations hold their property as citizens, and are entitled to its possession, enjoyment, and use as other citizens are, and cannot be deprived of it save by due process of law.

2d. That neither because of the receipt of loans, nor of donations, nor of any trust relative to this property, can the corporations be deprived of the above right.

3d. That Congress cannot make that due process of law, which, in its nature, is not such, and cannot, therefore, by seizure of the property of these corporations, without trial, enforce obedience to its enactments.

4th. That, under the reserved right to amend and repeal, Congress has

only the right to amend and repeal when necessary to accomplish the object of the acts in which it is reserved, and must exercise it with due regard to the rights of said companies.

5th. That this reserved power does not enable Congress to take away vested rights of, to, or in property invested in, or acquired under, the charter, before its amendment or repeal.

6th. That the franchise of a company enabling it to possess, control, and enjoy property, is vested property, and cannot be taken away or impaired by act of Congress.

7th. That the establishment of rules and regulations for the management of these roads would be an invasion of their vested rights, and unconstitutional.

Here we have, therefore, not only the denial of the right of Congress to seize the property which the company has acquired, and so use it as to carry out the purpose for which the company was originally allowed to hold it, but the bolder and more defiant denial of the right of Congress to regulate or control the management of that property in the possession of the corporation itself.

We admit that Congress cannot impair the obligations of any contract contained in the charters of these corporations, and that it cannot deprive them of their property, save by due process of law; but we do not assent to the application of these well-recognized principles as made in the case under consideration.

It is a startling proposition that Congress can create an instrumentality which it cannot control—a corporation to promote the public welfare, with unbounded powers—*imperium in imperio*, a monster with capacities of growth and power sufficient to overmaster, defy, and ultimately destroy the government which created it. The mere denial of the power of Congress to regulate and control these corporations tempts its exercise, especially when a crying necessity for its interposition exists.

1st. Congress has an unquestionable right to alter, amend, or repeal the acts under which these corporations are organized.

It was reserved with some modification in the original act of 1862, and directly and unqualifiedly in that of 1864. The corporations have accepted these acts and received the benefits bestowed by them. By so doing they have made themselves subject to their conditions.

Mr. Justice Clifford, in the Pennsylvania College case (13 Wallace, 190), said:

> Cases often arise where the legislature, in granting an act of incorporation for a private purpose, either makes the duration of the charter conditional or reserves to the State the power to alter, amend, or repeal the same at pleasure. Where such a provision is incorporated in the charter it is clear that it qualifies the grant, and that the subsequent exercise of that reserved power cannot be regarded as an act within the prohibition of the Constitution.

Cooley, in his work on Constitutional Limitations (page 383), says:

> A franchise granted by the State, with a reservation of the right of repeal, must be regarded as a mere privilege while it is suffered to continue; but the legislature may take it away at any time, and the grantees must rely for the perpetuity and integrity of the franchises granted to them solely upon the faith of the sovereign grantor!

The power to alter and amend is unlimited so long as its exercise does not essentially destroy or paralyze the franchise. Mr. Justice Redfield, in Thorpe *vs.* Rutland and Burlington Railway, said:

> The privilege of running the road and taking tolls or fare and freight is the essentia franchise conferred. Any act essentially paralyzing this franchise, or destroying the profits therefrom arising, would, no doubt, be void; but beyond that, the entire power of legislative control resides in the legislature, unless such power is expressly limited in the grant to the corporation.

The legislature may grant to a corporation the right to fix its own tolls, otherwise it may regulate them, so long as it does not do so to the extent of paralyzing the franchise. It may grant the exclusive right to construct and operate a road between certain termini for a term of years, otherwise it may charter another road to be built by the side of the first, materially injuring its value, or even to be laid over its road-bed, without compensation for the loss of business and profit.

In addition to this almost unlimited power to alter and amend exists the unquestionable power to repeal the charters of these roads. Admitting the claim that Congress cannot seize their property, it would be difficult to find a value for that property after the right has been taken away to run the cars and locomotives aver the iron rails fastened to the road-beds, of which that property principally consists. These corporations are at the mercy of Congress. Their only safeguards are in its justice and fair-dealing.

But we do not deem it necessary to invoke these extreme powers. They may well be reserved as an ultimate resort in case of neglect or refusal to submit to the easy and common remedies within the grasp of Congress. These are found in the power to oblige these corporations to perform the duties for which they were chartered in a proper manner, with safety and convenience to the public, and at reasonable rates without unjust discriminations.

Congress can supervise these roads and force them to conform to the terms of their charters in the matter of connections, and all other relations with each other. Under its police powers it can force them to keep their roads in proper order, and to maintain and operate them in a manner safe and convenient to the public. Under its power over them as common carriers, chartered by itself, it can compel them to perform their duties at reasonable rates and without unjust discriminations. Fortunately, we are not left in doubt as to the extent of this legislative power. It has been recently defined from the most authoritative tribunal of the land. Mr. Chief Justice Waite, delivering the opinion of the court in the case of the Chicago, Burlington and Quincy Railroad Company vs. Iowa, found in 4 Otto, 161, says:

> Railroad companies are carriers for hire. They are incorporated as such, and given extraordinary powers, in order that they may the better serve the public in that capacity. They are, therefore, engaged in a public employment affecting the public interest, and * * * subject to legislative control as to their rates of fares and freights, unless protected by their charters.

In the same opinion he says:

> This company, in the transaction of its business, has the same rights and is subject to the same control as private individuals under the same circumstances. It must carry, when called upon to do so, and can charge only a reasonable sum for the carriage.
>
> In the absence of any legislative regulation upon the subject, the courts must decide for it, when controversies arise, what is reasonable; but when the legislature steps in and prescribes a maximum of charge, it operates upon this corporation the same as upon an individual engaged in a similar business. It was in the power of the company to call upon the legislature to fix permanently this limit and make it part of the charter; and if it was refused, to abstain from building the road and establishing the contemplated business. But it did not, and the company invested its capital, relying upon the good faith of the people and the wisdom and impartiality of the legislature for protection against wrong under the form of legislative regulation.

Without citing further authorities, we do not hesitate to declare that Congress may easily exact obedience to its will in all proper respects from any contumacious corporation without by any means exhausting the weapons in its quiver, or even drawing therefrom those tipped with the sharpest points.

## THE REMEDY.

In seeking a remedy for the difficulties we have so briefly referred to, we are not dealing with a novel subject. We are upon a path already well worn by those whose experience and intelligence give great weight to their conclusions. As early as 1861 an able committee of the legislature of Massachusetts made a report on the same general subject, confined, of course, to the State roads. That committee reported substantially that the process of the courts was inadequate to meet the exigency, and that it was useless to refer a matter so complicated and multifarious in detail to the legislature. It recommended a commission. Legislative committees of other States have reached the same result. A joint committee of both houses of Parliament in 1873 recommended the establishment of a board of railway commissioners with almost unlimited authority. In accordance with these recommendations of said committees, railway commissions have been established in England, in Massachusetts, and in several other States, with most satisfactory results. Guided by these facts and by its own judgment, this committee believes that a solution of the difficulties which they have considered can be found only in the creation of a board of Pacific railway commissioners. And we see no reason why the supervision of such commissioners should not be extended over other government roads, and have provided accordingly in the bill.

To assure the desired results, this commission should be able, impartial, and specially skilled in the matters intrusted to its charge. A single commissioner would scarcely meet the requirements of the case; the bill, therefore, provides for the appointment of three. These officers should be selected from sections as remote as possible from all influences that might affect their judgment; should be skilled in law, in railroad management, and in general business, and should be men of the highest character and of signal ability. The field of influence and usefulness opened to them will be extended and important. If competent and faithful, they will occupy a position in which they can accomplish more than any other functionaries of the government in molding the destinies of the thrifty and growing West. In proportion as their duties are to be dignified and important, requiring the highest talent, their salaries should be ample to secure it. These salaries should be derived from the corporations whose necessities invoke the establishment of the board and who will be more than reimbursed by saving the single item of litigation.

The duties provided for these commissioners are within the limits of supervision merely. They represent the government in guarding the rights of the people, and carrying out the purposes of the charters, and seeing that their terms, conditions, and provisions are complied with.

It is believed that the supervision and recommendations of an able and impartial board will almost invariably secure acquiescence; but in the event of a refusal to accept its advice and directions, it is armed with the power of prompt and speedy enforcement through the courts, without prejudice to the rights of the corporations to test the validity of such directions without delay or essential injury. The harsh and possibly doubtful sanctions of forfeiture and confiscation are avoided. Even the clearly justifiable powers of amendment and possible repeal of charters are reserved for exigencies which, it is hoped, will never arise.

This able, impartial, and dignified board is simply the representative of the government—the friendly umpire between the roads, the guardian of the people's rights—which is to supervise, to guide, and to shape the

hese instrumentalities, created by the public bounty for
are. That the scheme of its organization is hasty, crude,
vill, doubtless, be found true. It will be for the board
ll acquaintance with its duties, to recommend such future
ill correct and perfect it.

45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 120.

# THE NORTHERN PACIFIC RAILROAD.

FEBRUARY 5, 1878.—Recommitted to the Committee on the Pacific Railroad and ordered to be printed.

Mr. WILLIAM W. RICE, from the Committee on the Pacific Railroad, submitted the following

## REPORT:

[To accompany bill H. R. 3066.]

The Northern Pacific Railroad Company was incorporated by act of Congress approved July 2, 1864.

By section 8 of that act it was required to complete its road by July 4, 1876.

Joint resolution of the Senate and House of Representatives, approved May 7, 1866, extended the time for the completion of the road two years.

Joint resolution, approved July 1, 1868, and entitled "Joint resolution extending the time for the completion of the Northern Pacific Railroad," amended section 8 of the original act by changing the time for the completion of the road to July 4, 1877.

The company claims that joint resolution of May 7, 1866, applies to section 8 of the act of July 2, 1864, as amended by joint resolution of July 1, 1868; and, consequently, that its time for completing the road does not expire until July 4, 1879.

On the other hand it is claimed that joint resolution of July 1, 1868, although by its title *extending* the time for completing the road, in effect *diminishes* that time, and that it really expired at the date fixed by that resolution, to wit, July 4, 1877.

The Department of the Interior is reported to have adopted the more liberal construction, and to have assumed that the company has the longer time for the completion of its road.

Equity and generous dealing seem to justify this conclusion, and in view of the impossibility of the completion of the road even within the *longer* time, we do not deem it necessary to express an opinion as to the technical effect of the foregoing resolutions. At all events, further time *must* be granted, or this great enterprise, as at present organized, must be abandoned.

Up to 1873 the company was not in default. It had constructed its main line to Bismarck, in the Territory of Dakota, a distance of 450 miles, and on the Pacific coast from Kalama, on the Columbia River, northerly to Tacoma, on Puget Sound, a distance of 105 miles. The financial disasters of 1873 suspended its operations, frustrated its resources, and forced it into bankruptcy.

By joint resolution approved May 31, 1870, Congress had authorized the company to issue its bonds, and to secure them by a mortgage of its property. Under this authority the company had issued bonds to

the amount of $29,119,400, and had secured the same by a first mortgage on all its property, including its franchises.

In 1875 this mortgage, the company being in default, was foreclosed, and all the property of the company passed into the hands of a committee appointed by the bondholders, and for their benefit.

In the summer of 1875 the bondholders, all concurring, either actively or tacitly, adopted a plan for reorganizing the company; preferred stock was issued in exchange for the bonds, and in September of that year a board of directors was chosen, which was put in possession of the property of the old company covered by the mortgage.

The stockholders in the company thus reorganized are between eight and nine thousand in number, and are scattered through more than half of the States of the Union. Their money made the property they now seek to save and enhance. They ask no subsidy, no additional grant or privilege, only an extension of time in which to complete the enterprise in which their money is invested, and which has been delayed and hindered by causes over which they had no control, and which occurred by no fault or omission of theirs.

The question for the consideration of the committee is, whether the public interests require the completion of this road, on the route and terms provided in the act of 1864, in the same or in a greater degree than at the time of its passage; and, if so, whether additional time should be granted to the company now engaged in the enterprise for its completion.

The arguments, *pro* and *con*, on the subject of national encouragement to transcontinental railroads are too familiar to require recapitulation. This discussion was ably and stoutly maintained on either side by statesmen whose intellectual strength and comprehension of the subject have left little or nothing to be added. The result was in favor of promoting, by public aid, the construction of northern, central, and southern roads from the Mississippi Valley to the Pacific Ocean.

In pursuance of this policy, thirteen years ago 47,000,000 acres of the public lands were granted for the construction of the northern road. Its route lies through a fertile country, rich in all the physical characteristics necessary for the support of a vast and prosperous population. Its grades are easier than on most of the roads in the Eastern States, and where the line diverges from a straight course, to avoid impassable mountain ranges, it opens to settlement the fertile valleys of the rivers whose banks it follows.

Settlers have preceded it in the faith of its construction, and prosperous Territories all along its route are only waiting for the additional population which its completion would speedily bring to claim their places among the States.

The committee are of opinion that a due regard to the interests of these Territories, and of the hardy pioneers who have settled them, demands l beral action on the part of Congress to complete this road, to which, in a measure, the public faith was pledged; that the lands originally granted for it are held, as it were, in trust for the benefit of these settlers; and that, even if, *strictissimi juris*, advantage might be taken of the failure to meet the requirements of the charter in point of time, still, good policy, if not good faith, requires the waiver of that advantage and a reasonable extension of time to secure the accomplishment of this great national work.

It further appears that the present company is composed of those who have contributed whatever money has thus far gone into the work, and that nobody else proposes to undertake it.

It is operating at the present time nearly six hundred miles of road, in good condition and under excellent management.

| | |
|---|---|
| In 1874, its net earnings were | $22,876 49 |
| In 1875, its net earnings were | 152,140 00 |
| In 1876, its net earnings were | 202,062 31 |
| In 1877, its net earnings were | 392,698 47 |

Its property has actually cost about $20,000,000 in money. It is free from debt, and its directors are confident that they can complete the road upon the credit of this property and the land-grant, if sufficient time is allowed them. The distance from Bismarck to the Columbia River is 1,205 miles, and the construction of the road for that distance gives a continuous route by rail and water from the lakes to the Pacific Ocean.

The committee are of opinion that, under the circumstances, the company is entitled to the favorable consideration of Congress, and that there is a reasonable assurance that it will be able to finish the work during the next ten years.

By the original charter of the Northern Pacific Company it was authorized to construct its road by two routes through Washington Territory, the upper being designated as the main line, and the lower as the branch line.

By subsequent acts these designations have been reversed, so that its main line now tends southerly from Lake Pend d'Oreille to the Columbia River, and thence through the valley of that river to Portland, in Oregon.

It is the desire of Oregon that the last division of the road should be constructed on the southerly side of the Columbia River, and the committee have so provided in the bill.

The company has changed the location of the branch line to one more southerly, and it is doubtful whether even the new location is practicable, owing to the difficulty of crossing the Cascade Mountains, which divide the territory, running northerly and southerly across almost its entire width. The representatives of Washington Territory oppose the continuation of the grant for the construction of this branch as keeping the lands tied up against settlement, and the committee, in deference to their wishes, report in favor of the restoration of the land withdrawn on that branch to the public domain, excepting about 793,000 acres earned by the construction of a road extending thirty-one miles easterly from Tacoma.

By this change of location, more than 6,000,000 of acres of land in Washington Territory, covered by the original locations, will be restored to the public domain.

A proposition was considered by the committee to declare forfeited by the Northern Pacific Company all lands in Washington Territory withdrawn for its branch line, and to grant an equal amount to the Portland, Salt Lake and South Pass Company, a corporation of the State of Oregon, organized to construct a railroad from Portland, through the Columbia Valley, to Umatilla, and thence by a southerly route through East Oregon, some 450 miles to the Union Pacific and Central Pacific, at Ogden.

This seems to your committee to be a scheme to obtain from Congress an endowment for a new, independent road, and one which, if constructed, would be a rival road to that of the Northern Pacific. These reasons, without passing upon its merits, seem sufficient to the committee to prevent its incorporation in a bill to promote and encourage the *completion of the Northern* Pacific Road, and they leave the lands re-

n to t blic domain by the discontinuance of the branch unin-
ered by any new appropriation.
ile reporting in favor of extending the time within which the com-
ay finish their road, the committee are greatly impressed by
cessity of withdrawing, as far as possible, all obstacles to the set-
t of the lands covered by the grants to this company.
marketable value of the lands will of course be enhanced as the
of const ction progresses, and the company should be allowed
nt that enhancement, and some advantage therefrom.
ime, the public advantage to be derived from the early
of ese lands should not be sacrificed.
committee have, therefore, enlarged the rights and opportunities
settl s, while reserving to the company the control over the
dy ed nished road, and over the sur-
ea ds within the red miles from the progress of
construction.
All of which is respectf mitted.

## VIEWS OF THE MINORITY.

ccompany the report of the Committee on the Pacific Railroad on the bill extend-
i g the time to construct and complete the Northern Pacific Railroad.

The undersigned disagree to the report of the committee, and oppose he passage of the bill for a renewal of the grant of lands made by it, ch is in substance and principle a *new grant*, to which we are op-osed. Such grants are not now warranted by the public interest, and are condemned by the public judgment.

WM. R. MORRISON.
J. K. LUTTRELL.
G. M. LANDERS.

45TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT 620, Part 2.

# ESTABLISHMENT OF A BOARD OF PACIFIC RAILROAD COMMISSIONERS.

APRIL 17, 1878.—Committed to the Committee of the Whole House on the state of the Union, made the special order for May 15, 1878, and ordered to be printed.

Mr. BLAIR, from the Committee on the Pacific Railroad, submitted the following as the

## VIEWS OF THE MINORITY:

### THE PRO RATE CONTROVERSY BETWEEN THE KANSAS PACIFIC AND UNION PACIFIC RAILROADS.

As a minority of the Committee on Pacific Railroads, to whom were committed House bills 2608 and 3999, being unable to join in the report of the majority, I beg leave to submit my views as follows:

These bills grow out of what is known as the pro-rate controversy which has arisen between the Kansas Pacific and the Denver Pacific Railroads on one hand, and the Union Pacific Railroad on the other, in regard to the true legal construction of the fifteenth section of the act of July 2, 1864, entitled "An act to amend 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes' approved July 1, eighteen hundred and sixty-two," which section is as follows:

SEC. 15. *And be it further enacted*, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line; and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others; and it shall not be lawful for the proprietors of any line of telegraph authorized by this act, or the act amended by this act, to refuse or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured, for each offense, the sum of one hundred dollars, and such other damages as he may have suffered on account of said refusal or failure, to be sued for and recovered in any court of the United States, or of any State or Territory of competent jurisdiction.

A brief sketch of the origin and nature of the controversy is necessary to a clear understanding of the case and of the remedial legislation appropriate thereto.

For many years the nation had cherished the vision of communication with our Pacific possessions and with oriental countries by means of a transcontinental railroad, when the outbreak of civil war made its immediate realization apparently necessary to our territorial integrity and the promotion of our prosperity and power. Instructed by early defeats and the patent eagerness of European rivals to divide and destroy us, and rising with disaster, the people resolved at once to maintain, not alone the supremacy of our flag over the revolted States, but

that all their blood and treasure should be expended, if necessary, to hold and protect the furthest inch of our soil against foreign foes.

Stimulated by such motives, Congress only formulated the national will in the acts of July 1, 1862, and July 2, 1864, by which the Union and Central Pacific Railroad corporations and their branches were created or recognized by the nation as the chosen agencies through which the great enterprise was to be carried out, and extensive subsidies in land, together with a loan in money, which was nearly or quite sufficient to construct the roads, were advanced to the corporations.

Questions of constitutional power and of economy in expenditure, which in ordinary times would have exhausted Congress and the country with debate, vanished like mist in the white heat of the emergency, and the work was completed with unexampled energy and promptitude, and with a wild extravagance of expenditure on the part of those in charge of the enterprise, consistent with the headlong, though probably necessary, legislation which had rendered success possible.

These railroads and their branches completed, their practical relations to the public and to each other soon became the subject of most serious concern. Their common charter, the acts of Congress above referred to, had laid down substantially in a single section, as finally embodied in the act of 1864, "the law of their being." The section has already been cited.

This law is conceded by all to cover the entire pro-rate controversy. During the protracted hearing before the committee, which was conducted on both sides by the most eminent counsel, with an exhaustive research and ability commensurate with the immense interests involved, it was always claimed by both sides that if a judicial construction and exposition of the meaning of this section could be obtained and enforced, the rights of all parties would be fully secured; and it is apparent from the most casual reading of the law that, if properly construed and administered, the public good would be thoroughly conserved.

Early in the session a bill was accordingly introduced into the Senate declaratory of the meaning of this section of the law of 1864; and later the same bill substantially was introduced into the House, which was referred to our committee, and upon this bill, and upon a substitute which was informally filed before us by Mr. Crittenden, of Missouri, the hearing proceeded to the end.

The controversy before us was carried on by the Kansas Pacific Railroad against the Union Pacific Railroad; but all the corporations connecting with them, whether east or west, were interested in the issue, and many of them were heard by their counsel, as well as the commercial interests of large cities through leading merchants and citizens.

The Kansas Pacific Railroad commences at Kansas City, in the State of Missouri, on the river of the same name, and pushes westerly to Denver, the capital of Colorado; thence northerly 106 miles by the Denver Pacific Railroad and Telegraph Company (the majority of the stock of which is owned by the Kansas Pacific, which thus controls the road itself), to the town of Cheyenne, in the Territory of Wyoming, on the line of the Union Pacific. Cheyenne is just 516 miles from Omaha, and the same distance from Ogden, which are the easterly and westerly termini of the Union Pacific Railroad. It is thus seen that the total length of the Union Pacific is 1,132 miles, while the whole length of the Kansas Pacific from Kansas City to Cheyenne is 745.

The Council Bluffs, Saint Joseph and Kansas City Railroad, an independent line 204 miles in length, running from Kansas City to Omaha,

but in friendly connection with the Union Pacific, constitutes, with the latter, a line between Kansas City and Omaha, competing with the Kansas Pacific, having the advantage of 25 miles in distance, equally favorable grades, and that superiority of operation which grows out of financial success. The evidence showed also that the line via Omaha was able to compete with the Kansas Pacific for the business of Saint Louis and points of which she is the depot. On the other hand, the Kansas Pacific, owning the Denver Pacific, and thus controlling the only avenue by rail to the vast resources of Colorado with her energetic and increasing population, was in a situation to blockade, and did blockade, at Cheyenne, all business passing either way over the Union Pacific consigned to that growing State and the developing regions to the south and west, or seeking transit therefrom to other parts of the country.

The corporations failing to agree as to the terms upon which each should carry the business of the other over their lines respectively, the Union Pacific declined to receive the business of the Kansas Pacific at Cheyenne at other than the rates charged by them for local business originating at that place; thus perpetrating an unjust and ruinous discrimination, in violation of law, against the Kansas Pacific and the public desiring to use the same. The Kansas Pacific stopped up the Denver Pacific by excessive charges to the Colorado business coming or going over the Union Pacific Railroad, until the latter laid a line of its own from Cheyenne to Denver, consisting of 100 miles of duplicate road which is really unnecessary. In this contest both corporations were violating the law, and the weaker pitcher went to the wall, but not without inflicting much injury upon the Union Pacific—the public interests suffering most of all.

The government directors in the Union Pacific corporation, having powers equivalent to nearly all which, in my belief, can legally or judiciously be given to any supervisory body of men, as well as individual sufferers, slept, the former upon their duties and all upon their rights, and thus for several years no real effort was made to invoke that redress which was always available by application to the courts to construe and enforce the law.

Finally, the Kansas Pacific did just what every one else has to do when he seeks redress for the supposed invasion of his rights. It brought an action in court as plaintiff against the Union Pacific as defendant, setting up its construction of the law aforesaid, which was applicable to them both, which construction was the substance of the bill which they asked the House to enact as declaratory of the true intent and meaning of said fifteenth section of the act of 1864.

The Union Pacific promptly made answer, but the plaintiff delayed until 1877, some two years, when the case was brought on for argument before the court of the district of Nebraska, and, after full hearing, was submitted last autumn. One of the judges having declined to sit further, from motives of delicacy, the Kansas Pacific transferred the controversy from the courts to Congress, and has endeavored to discontinue a suit now well advanced and in which every controverted proposition of law as well as grievance of fact between itself and the Union Pacific, and between both and the public, would probably ere now, certainly very soon, have been decided and remedied by the highest judicial tribunals of the country, whose powers have never before been appealed to, and to whom the whole subject-matter legitimately belongs. It is not necessary to comment upon the reasons which have led this corporation to ignore the tribunals which have proved themselves the unfailing trust of a *free people*. But certainly I am not aware of it, if the provisions

of its bill, which, as I have before said, embodied the construction of the law which it demanded from the courts, commended themselves to the judgment of any member of your committee.

I can hardly better give the exact issue as made up between the companies than by citing the bill submitted by Mr. Chittenden to your committee:

A BILL declaratory of the meaning and intendment of the fifteenth section of the act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean.'"

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be, and is hereby, added to the act approved June twentieth, eighteen hundred and seventy-four, entitled "An act making additions to the fifteenth section of the act approved July second, eighteen hundred and sixty-four, entitled 'An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two,'" the following words, namely:

SEC. 2. That it is hereby declared to be the duty of the Union Pacific Railroad Company, and the said company is hereby required, in the operation and use of its road, so far as the public, the government, and the Kansas Pacific Railway Company are concerned (the Denver Pacific Railway and Telegraph Company being deemed and taken to be a part and extension of the road of the Kansas Pacific Railway Company), to charge rates of freight and fare as follows: On all freight and passenger traffic originating at or beyond, and destined for or beyond, the respective terminal points of the said roads, and on all freight or passenger traffic originating at or beyond either of the terminal points of the road of the Union Pacific Railroad Company, and destined for any point on said road of said Kansas Pacific Railway Company, and on all freight or passenger traffic originating at any point on said road of said Kansas Pacific Railway Company, and destined for or beyond either of the terminal points of the road of said Union Pacific Railroad Company, a rate of freight or fare for transportation by it which shall be fixed in all cases at a mileage rate equal only to a prorate per mile of the lowest through rate charged or received, either directly or indirectly, by said Union Pacific Railroad Company for transportation or traffic of a similar description or character over its entire road; on all freight or passenger traffic originating at any intermediate point on the road of said Union Pacific Railroad Company, and destined for any intermediate point on said road of said Kansas Pacific Railway Company, or originating at any point on said road of said Kansas Pacific Railway Company, and destined for any intermediate point on the said road of said Union Pacific Railroad Company, a rate of freight or fare for transportation by it which shall be fixed in all cases at the same rate charged or received by it, either directly or indirect, for transportation or traffic of a similar description or character over its own road.

SEC. 3. That in all cases herein provided for, said Union Pacific Railroad Company shall not demand, establish, or receive for transportation of freight or passenger traffic over its entire road, or any part thereof, rates of freight or fare which shall be discriminating in any manner whatsoever against said road or the business of said Kansas Pacific Railway Company, or any part thereof, or which shall be any other than uniform published mileage rates for all transportation or traffic of a similar description or character.

SEC. 4. That it is hereby declared further to be the duty of the Union Pacific Railroad Company and said company is hereby required, in the operation and use of said road as above provided, to afford and secure to all freight and passenger traffic, going to or coming from its road, at the point of connection thereof with said road of said Kansas Pacific Railway Company, the same and equal facilities and advantages for transportation in through cars and in all other respects as are afforded and secured by it to transportation or traffic of a similar description or character, received at either of the terminal points of its said road for transportation over its entire road.

SEC. 5. That all the provisions and requirements of this act and the acts of which this act is amendatory shall apply equally and reciprocally to the Union Pacific Railroad Company, the Central Pacific Railroad Company of California, the Kansas Pacific Railway Company, the Denver Pacific Railway and Telegraph Company, the Sioux City and Pacific Railroad Company, and the Burlington and Missouri River Railroad Company in Nebraska, in respect to the operation and use of their respective roads.

SEC. 6. That if any of the said several companies mentioned in this act shall neglect or refuse to comply with the provisions of this act or acts of which this act is amendatory, the President of the United States, upon complaint to him, duly verified, of the violation of any of the provisions of this act or the acts of which this act is amendatory and upon being satisfied of the truth thereof, shall appoint a commissioner, whose duty it shall be forthwith to take possession of the road or roads of the defaulting

company or companies, and make the necessary arrangements, regulations, and provisions for carrying out the provisions of this and the acts of which this act is amendatory, and shall retain the possession, control, and management of said road or roads and operate the same until otherwise ordered by the President or by act of Congress; and for any subsequent violation of any of the provisions of this act or any other of said acts like proceedings shall be had: the expenses incurred by said commissioner and his reasonable compensation shall be fixed by the President of the United States and paid by the defaulting company or companies before possession of the property shall be surrendered to it or them.

## THE PROMINENT ISSUES BETWEEN THE PARTIES.

It was claimed by the Kansas Pacific, among other things, first, that the act of 1864 required that all its business passing over the westerly half of the Union Pacific from Cheyenne to Ogden should be conveyed at the same rate per mile as though it also passed over the easterly half of that road from Cheyenne to Omaha; and, further, that the rate which the Kansas Pacific should pay for the use of either half of the Union Pacific should be as low as the Union Pacific should charge to through business over its entire line; thus ignoring the well-established and indispensable distinction between long and short distances in adjusting the mileage of all transportation in the known world. It also appeared to be a fact that the cost of carriage is very much greater over the westerly than it is over the easterly half of the Union Pacific Railroad.

Second. That in the operation of its road the Union Pacific was bound to admit the engines, trains, and servants of the Kansas Pacific upon the track of the Union Pacific, if required so to do by the Kansas Pacific, and that in all respects the two roads, notwithstanding their divided and hostile ownership, were to be used and operated together in all respects as though one continuous line under the same ownership. These propositions were denied by the Union Pacific Company. Many other points were set up, but these were the ones upon which the controversy turned.

It should be observed that the Kansas Pacific admitted that it was subject to the same obligations which it sought to exact from the Union Pacific, and also, that by reason of its more favorable grades and curves, that it alone could reap any relative advantage from its construction of the law, especially since the Union Pacific had already constructed a road of its own to the heart of Colorado, and is no longer in want of the Denver Pacific branch.

The Supreme Court has settled beyond dispute the power of Congress by public laws to regulate rates of transportation over railroads, the chartered powers of which are derived from the United States. This being conceded, there can be no doubt that the 15th section of the act of 1864, by its very broad yet explicit terms, covered everything in controversy between the parties, and is ample to protect every interest of the public and the government.

In regard to the matter of rates of transportation which are not made specific in amount in the act, by ordinary rules of construction *reasonable* rates are prescribed by the law, and, as in all other like cases, it would be the province of the courts by due process of law to determine their amount, which once ascertained in any particular case would afford a standard for all other like cases, with no more trouble in the assertion of violated rights than is incident to the common processes of taking care of one's self in a free country. The same observation is true in regard to all other questions which could arise under the comprehensive provisions of this law. It is thus apparent that the learned gentlemen representing both corporations were right when they said that all any one

needed, or should desire, is the proper elucidation and construction of that law of the meaning of which their proposed bill was only declaratory.

The committee is not divided as to the existence of the grievance. Between the opposing controversies of the corporations, just such as exist in like matters all over the country, and in every State of the Union, and the failure either of the companies, or individuals, or any one in behalf of the public to set in motion the ready machinery of the courts, the interests of all parties suffer. It is not necessary to exhaust the vocabulary for terms of malediction and denunciation of railroad corporations. In these times when it is popular, and to a certain extent proper to condemn them, and when some moral courage is required even to do them justice, there is little danger that we shall fail to go to the extreme boundary of our power to restrain them within the limits of the law. The real danger is that in our eagerness and zeal to demolish and punish, we shall appeal to crude and unusual expedients, and to remedies, which, hitherto unknown in the land, will be likely to fail us in practice and which after, it may be, years of useless trial, will return to us the evil ten times magnified, to be removed at last by the forms and methods sanctioned by the experience of free government for ages, and never yet found wanting to remove any evil which human tribunals can eliminate from human affairs.

## BILL RECOMMENDED IN THIS REPORT.

I have found myself compelled most reluctantly to differ with a large majority of the committee, not in regard to the grievance, but in regard to the remedy for it in this case. I am not slow to understand that in the present frame of the public mind it may seem a tame thing to send this controversy to the courts, rather than to resort to the more imposing creation of the majority. But I find myself more and more convinced by reflection that there is nothing but evil, disappointment, and delusion in the proposed commission, its vast and irresponsible powers, with its unique and arbitrary methods of action. I have, therefore, drawn the accompanying bill, which, in my belief, covers all the ground, and, if passed, will hurry this whole difficulty to a very early and final solution.

It will be observed that this bill provides for the earliest possible construction of the law by the Supreme Court, the tribunal of last resort, before which all the novel provisions of the bill of the majority will certainly be tested before their operation will be acquiesced in by the country. It also provides that not only the corporations but the people, through their Attorney-General, shall be represented, and the full exposition of the law for the protection of individuals and the government be obtained in the pending proceeding. Should any party abandon the suit, the Attorney-General is still required to press it to a final decision which shall cover all the points in controversy that any one may raise, including regulation of rates of transportation, connections, accommodations, discriminations, and advantages, and every point which can become the subject-matter of controversy under this confessedly comprehensive and sufficient law. This exposition of the law and of the rules and regulations laid down by the court, for the use and operation of these several roads, is to be enforced by the whole judicial power in its summary and resistless methods, by which every disobedient officer or servant of the corporations can be subjected to close confinement at the will of the court.

A willful violation or neglect of this decision by the corporation is

made a forfeiture, *ipso facto*, of the charter, to become operative as soon as established by due process of law, unless relieved by Congress; and to participate in any willful act of disobedience or neglect to enforce the rules and regulations of the court disfranchises any person from ever holding a place of trust in the corporation, and subjects him to punishment by fine and imprisonment, or by both, in the discretion of the court. It is made the duty of the court to give a preference to all proceedings under the act.

The concluding section also saves all existing actions and remedies to all parties, and places the Union Pacific Railroad on a par with any of its branches in the courts, which, strange as it may seem, is not now the case.

BILL OF THE MAJORITY.

The bill reported by the majority cuts loose from all forms of remedy to which we are accustomed in this country, whether of a legislative, judicial, or executive nature, and creates a dictatorial triumvirate with despotic powers over all the transportation of the country, being or to be, west of the Mississippi River; and, by reason of the connection of all our avenues of trade, with an extraordinary degree of absolute power over the commerce of the entire republic.

It is safe to say that no three Americans, except in time of war, and not even then in some important respects, were ever yet clothed with the absolute power which it is proposed by this bill to confer upon these no doubt very worthy and able gentlemen, but of whom there is not such universal knowledge that their special fitness to assume the charge of the private and public business of the country should not be the cause of anxious solicitude to the American people before Congress shall pass this bill.

The first section provides for the appointment of Charles Francis Adams, of Massachusetts; Thomas M. Cooley, of Michigan; and Albert Finckie, of Kentucky, as a board of Pacific Railroad Commissioners for a term of three years, whose successors shall be appointed by the President with the advice and consent of Senate, and also confers upon the President the power to cause and with the advice and consent of the Senate to fill vacancies in the board at his discretion, thus placing the board itself at the mercy of the Executive.

I do not design to criticise the *personnel* of the board as proposed at the start, because whatever may be their superior qualifications or their demerits is of little importance in my view, compared with the fact that such a board with the powers created in this bill is allowed to exist at all, and the further fact that sooner or later it will be sure to become the slave either of the Executive or of the corporation, an utter sham and failure, or a despotism by itself.

But I call attention to the manner of the appointment of the first commissioners *by act of Congress*. I think there can be no doubt that membership of this extraordinary board constitutes a very high office, appointment to which is not a legislative act and within the constitutional power of the legislature to perform. These appointments can only be made by the President, by and with the advice and consent of the Senate, and the reason for attempting to deprive the appointing power, under the Constitution, of its jurisdiction in the first appointments, *and those only*, presents a fruitful field of thought, which will be alluded to later in this report. Bearing upon this point I would refer to State *vs.* Kenner *et al.*, 7 Ohio State Reports, where the court says:

*To make an appointment* to office is an administrative function; and under a constitution in which the philosophical theory of a division of the powers of government

into legislative, executive, and judicial should be exactly carried out in detail, the power of prescribing the manner of making appointments to office would fall naturally and properly to the legislative department, while the power to make the appointments themselves would fall as naturally and properly to the executive department.

The Constitution of the United States, itself the highest form of a legislative act, has expressly given the power of appointment to the President and Senate. But I believe the power to create officers with such extraordinary functions as are conferred upon this triumvirate, if it must be done at all, should be exercised by the people of the whole country in their elective capacity. True that the Constitution makes no provision for the election of such officers, but an emergency which would call for their creation would be one requiring not only the amendment of the Constitution, but its overthrow, and the substitution of anti republican forms.

The second section provides that said board of commissioners *shall have a general supervision* of all railroads west of the Mississippi River, which have received or shall hereafter receive any aid in lands or credit from the United States.

Just what may be done under the power of "general supervision" may be open to doubt, but it is certainly the grant of a great affirmative aggressive power, interfering vitally with the control of private property by its owners, and which, by analogy, may be extended not only to all other railroads, but to the management of all other business affairs, as the iron and cotton manufacture, the mining, the press of the country, and other great interests, in which abuses from time to time may arise, all which, like the railroads, are now, like individuals, amenable only to the general laws of the land.

The term *supervision* is defined as *more* than overlooking and inspection. It is also *superintendence*, *direction*, control. The verb "to supervise" is thus defined by Mr. Webster: "To oversee for direction; to superintend; to inspect." The natural construction of the power herein conferred is that of absolute control of the general policy and business management of the corporations of half the country. Granted that the whole act must be construed together; but it will be found as we proceed that nothing in subsequent parts of the bill seriously impairs the vast powers vested by this section in the board.

There is no apparent reason why this power if conferred at all should be restricted to the roads west of the Mississippi River. The grievances complained of are matters of yearly occurrence between the great lines east of that river and upon a scale far greater than the evils at Cheyenne. The *power* of the government if properly exercised over the subject-matter, which I not only concede but assert as firmly, if not as enthusiastically, as the majority, does not depend upon the circumstance that the relation of debtor and creditor exists between the government and the corporation, but upon great fundamental considerations of public justice and sound policy, while the occasion for its exercise in legitimate forms is greater in New York, Philadelphia, Baltimore, Chicago, and Saint Louis than at Cheyenne. If these three beings have the capacity to run the transportation of the West it is because they are gods and not men. The majority need not hesitate, therefore, to cast upon their supernal powers the superintendence of the transportation not only of the whole country but of the universe.

Grievances exist elsewhere as well as in the far West, and the exaltation of soul which has produced a board of salvation for all the ills of life along the central line of the Pacific railroads should not rest without conferring upon the more populous regions east of the Father of Waters

the same inestimable boon. Again there can be no reason of fact or logic why all internal water transportation should not be regulated in a similar way, as well as those routes of ocean-carriage which transport the persons and property of Americans, and especially those which compete or combine with the land-lines of the country via the isthmus and through Canada by the great lakes and the Saint Lawrence.

The third section specifies one useful purpose which three men might perform, that of inspection and report of all knowledge to the government which it should possess in order to enable Congress to properly exercise *its* undeniable powers of supervision and control of the corporations; but why that duty will be better performed by the gentlemen advertised in this bill than it is or may be by the government directors who represent the public in the management of the roads, it is difficult to understand. Should it be said that the government directors are not proof against the wiles of their surroundings, the assertion is very suggestive of the dangers to which any small body of men is subject in the discharge of duties of this nature. If Congress and the courts are too corrupt or too inefficient to be trusted with the exercise of their legitimate powers, is there any certainty that this board will prove to be the last fortress of virtue and the last safe depositary of human rights?

The fourth section provides that after *consultation*, not agreement, with the officers of the corporation, the said commissioners shall proceed to establish rules and regulations to *govern* the operation and management of the roads of said corporations, and shall *supervise*, that is, either with their own agents and servants or by the voluntary or compulsory obedience of the corporations themselves, shall direct and enforce the observance of their rules and regulations, so as to afford and secure to the government and the public all the advantages of inter-communication as stipulated and defined in the acts of the incorporation of the Union Pacific Railroad, which rules and regulations shall *govern* said corporations in the operation and management of their respective roads *until* the same shall be revised, altered, or annulled *by said commissioners*, or by the circuit or Supreme Court of the United States as afterward provided. This board thus enacts laws to be in force until repealed, just like any other law-making power.

The fifth section makes the board a tribunal proceeding without regard to the forms of the common law, with no provision for trial by jury, with no power in the parties to escape from its jurisdiction, and with no right of review or of appeal from its decision, which may proceed upon motion of any person or corporation to try and render final judgment upon all causes of complaint and controversy, *whatever*, which may arise between any of these railroad corporations, or between any of them and individuals. Incomprehensible as it may seem to the average mind that such a proposition could find support among the representatives of a free people, it is nevertheless true that this bill proposes to vest in these three men the summary control, to remain there until in some way they can be shaken off, of all questions of law and fact which can arise touching these immense interests, interests which it is safe to say are now as important as the entire system of affairs in many of the sovereign States, and which will soon come to embrace the substantial control of half the country. Again I ask who are these men, and who are any three or three thousand men, that they should rule over us, blot out the jury and the judiciary, destroy all the safeguards of liberty and property which twenty centuries have so painfully erected, and shoulder a mass of affairs which would overwhelm all but omnipotent powers?

The sixth section extends specifically the jurisdiction of this Triumvirate to every supposable case in which it shall *appear* to them that there is any legal delinquency on the part of any one of these corporations west of the Mississippi. It includes almost every conceivable cause of action and detail of operation, management, and use of the corporate property, such as the nature of accommodations, connections, rolling stock, tracks and road-beds, charges and discriminations, changes in its buildings or stations, in its rates of transportation, or in the language of the bill itself, "any change in its mode of operating its road or of conducting its business." Whenever it *appears* to them that anything should be done which the corporation is not doing and which is not inconsistent, that is prohibited by "the acts of Congress aforesaid," which acts be it remembered apply only to *one single road* and its branches, *then* the commission shall make such rules and regulations, directions and orders in said respects as to them shall seem proper and necessary.

This section is only an iteration of the fourth, a little worse because more specific.

By both sections there is an unlimited discretionary power vested in the board to make and enforce laws. True, there is in the sixth an illusory limitation placed upon their powers by the clause providing that their rules shall not be *inconsistent* with the acts incorporating the Union Pacific, but those acts have no reference to any other road; and even if they were applicable to all the roads, the details of the whole subject-matter are confided to the board, and it would be impossible for a court ever to try the justice of their discretionary action, especially when exercised upon questions of fact, which will always be really the most important.

Suppose, for instance, that the corporation should charge 3½ cents per mile for transportation of passengers, and the board should fix the rate at 3 cents. So small a difference as that would be likely to involve the success or ruin of many corporations. This bill gives absolutely the power to make the will of this board the *law*. The roads must conform to it, or violate the law and be subject to the forfeiture of their franchises by the terms of their charters for disobedience to the law. It makes no difference that this penalty is not specified in the pending bill. It is in the charters of the companies, and is a part of the general law of the land.

I believe that under the provisions of this bill it is not in the power of the courts to set aside any of the acts of the commission when they exercise their discretion upon the affairs of the roads and do not commit a direct violation of the acts of incorporation, the general terms of which make it almost impossible to say that anything which the board may see fit to prescribe is *inconsistent* with them. At all events, it is absolutely clear that it is made the duty of the commissioners to exercise their discretion *in the first instance*, and their rules and regulations *are laws until repealed* either by themselves or by the courts in the few cases which might possibly reach them. The judgment and discretion of the commission is substituted for that of Congress, the courts, and of the corporations in all those vast concerns. It is not necessary to say that whoever controls thus absolutely a railroad during the period of an ordinary lawsuit can, either by fraud or folly, destroy it. Besides, even if these rules should be set aside by the court, the board may already have anticipated the decision by imposing new ones equally offensive and injurious, which, by changing the direction of the pressure, will evade the

decision of the court, and thus the ruinous process may be continued until the corporate property is destroyed.

I come now to the seventh section, which provides for the *enforcement* of the decisions, rules, regulations, directions, and orders of the commissioners in case of non-compliance with them by the corporations. In the great majority of cases they would doubtless obey rather than contend with arbitrary power even for their rights. But there might be cases of neglect or resistance, and the bill, therefore, provides that in such case any party aggrieved or the commissioners may file their bill in equity praying a decree for the *enforcement of said decision, rule, regulation, direction, or order*, and *also such interlocutory order as he or they may deem necessary—*

*And thereupon it shall be the duty of the judge of the court in which the bill is filed to direct the issue of such restraining or mandatory injunction as will compel the immediate performance of the decision, rule, regulation, direction, or order of said commissioners.*

Then follows the proviso that the judge be satisfied that a proper case for an injunction be made by the complainant. This would be done whenever formal proof of the "decision, rule," &c., of the commissioners and of its neglect or violation was produced; otherwise the whole proceeding would be nugatory. A further proviso saves from the operation of the injunction *final* and *permanent* action in the matter of repairs, additions, and changes, whatever that may mean. Then follow provisions for summary trials before the court itself; of just what questions, whether for the review of all questions of law and fact involved in the original decisions, rule, regulation, direction, or order of the commissioners, or only the regularity of their proceedings under the law, is not clear, but probably the former. In any view, the ordinary right in a court of chancery to remit questions of fact to a jury is apparently denied, for the proofs shall be taken within the shortest time possible to be limited by the judge, and the cause shall have precedence over *all other business in any court* in which it may be pending, and may be heard either in court or at chambers upon thirty days' notice to be given by either party to the other.

Thus, any one of the thousand of little as well as important suits, whether involving single dollars or millions, sure to grow out of this law can interrupt and postpone the gravest litigation of the country, whether civil or criminal. Such a provision might well exist for a single case, comprehending the great leading rules and regulations to be deduced from the charter of the corporations. Such a suit is proposed in the bill herewith submitted. But to clog the regular tribunals with a jam of suits under this law will be a practical denial of justice to the litigants of the nation at large. Mark now the iron harshness of procedure in this modern Draconian device during the progress of the litigation which is to determine whether or not the commissioners themselves have violated the law:

*The orders, decrees, or judgments of said judge or court shall not be superseded by any bonds or other securities, but shall remain in full force until vacated, modified, or reversed by the judge or court making the same or by the United States Supreme Court.*

I assert that under the astonishing provisions of this bill there is not a railroad corporation in the country which could survive its hostile administration for five years.

Sections 8 and 9 contain provisions relating to the inspection of books, contracts, &c., and providing for reports by the corporations to the commissioners and by the commissioners to Congress.

It is a relief to be able to dismiss them without comment.

The tenth section fixes the salaries of the commissioners at $10,000 and $2,500 for their clerk, with free passes for the entire establishment over the roads they are to regulate and control; likewise expenses for offices, books, maps, stationery, and other expenses incidental to the discharge of their duties, which will no doubt be modeled upon the bills for a Congressional burial.

All these are first to be paid by the government and then charged over to the victimized corporations.

It is the complete application upon a sublime scale of the old rule which required the payment of forty shillings for the privilege of being hung.

I deny the power of Congress to impose any special tax to defray the general expenses of the nation upon a corporation without its consent. This expenditure is expressly made a charge upon the government in the first instance, and Congress has no power under the right of alteration, amendment, and repeal, or any other power, to subject the corporations to the expenses of this commission, any more than for money paid out as salaries of the President and other public officers.

Some minor provisions remain, but I cannot stop to note them here.

## REVIEW OF THE PROVISIONS OF THIS BILL.

I have thus summarized the provisions of this most extraordinary bill, the arbitrary and despotic elements of which never before to my knowledge were formulated in the report of a Congressional committee. I think I have stated the nature of the bill with moderation, and that a serious consideration by candid minds will develop toward it constantly increasing antagonism.

It only remains for me to state a few further leading and insuperable objections:

First. This bill proposes to create a monstrosity vested with legislative powers of very high order.

Second. It confers upon the same thing *judicial* powers, and the still further incongruous function of acting judicially *upon questions arising under its own legislation.*

Third. Calling to its aid the regular judiciary of the country, to the neglect of all other duties, and in violation of its most sacred and time-honored forms of administration, and depriving the citizen of his trial by jury and of his property without due process of law, it compels compliance with the decrees of the Triumvirate even when that decree is in violation of this very bill, and of their own orders, rules, regulations, decisions, and decrees.

The bill thus vests in the Triumvirate, legislative, judicial, and executive power.

The idea seems to have grown out of the board of railway commissioners of Great Britain, which is the offspring of an omnipotent parliament, which combines in itself all the essential but distinct elements of sovereignty, and can delegate them as it chooses; but even there the board is, in practice, little more than a court of arbitration, which may act by agreement of parties. Massachusetts has adopted something of the kind in theory, but in practical operation her commissioners have never, to my knowledge, and certainly to no important degree, undertaken to exercise the alarming functions conferred by this bill.

In our form of government the legislative, executive, and judicial powers are distinct and co-ordinate. Though forever near, they are forever separate, and neither can infringe upon the other. Neither can

delegate or alienate its power. Each power must be exercised by the agency created by the Constitution. It cannot be delegated by that agency.

The legislative power is vested in Congress. It cannot be delegated to a board or to any other tribunal. The agent cannot delegate his functions to a sub-agent; this will be conceded.

What, then, is a legislative act? It is making laws, rules of action, regarding life, liberty, and property.

Thus, the *legislative power* may, by law, fix rates of transportation. It did so in the Granger cases, and the Supreme Court holds that the law is valid.

This bill confers the same power to fix rates of transportation *upon the commission*. If it is a legislative act when performed by a legislature or by Congress, it is so when performed by the commission. It is fixing a rule of action which regulates and controls vast property rights; it is legislation. I cannot enlarge here, but refer to Cooley's Constitutional Limitations, page 117, &c., and to 1 Ohio (new series), Railroad *vs.* Commissioners of Clinton County, page 88, where the court says, after elaborate discussion of the subject, and special allusion to the power vested in assessors of taxes, &c.:

> The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its *execution*, to be exercised under and in pursuance of the law. *The first cannot be done;* to the latter no valid objection can be made.

Of the essence of this bill is the *legislative* power which it confers upon the board of commissioners.

It cannot be said that its rules and regulations, decisions, orders, and decrees are not rules of action to which the corporations must conform. Nor can it be said that if this bill is passed, all that the corporations need do is to resist its provisions, and that the courts will thereupon set it aside if it is decided to be unconstitutional and void. That does not prevent the bill, if passed, being a legislative act, and a law too, until it is set aside by the courts. The presumption will be that it is a constitutional law, and it must be obeyed. We must suppose that in many instances the rules, &c., of the board will be submitted to rather than engage in litigation; but that does not change their intrinsic nature as an invasion of right.

The question is not how shall the citizen get rid of an unconstitutional law, *but shall we deliberately make one*, because we think he will submit to it rather than fight? Congress may enact all needful legislation relating, however minutely, to the regulation of these corporations, not overthrowing vested rights, and the courts may construe and apply it; but I repeat that Congress cannot delegate the exercise of this power.

Again, much of the power of the commission will consist, first, in placing upon the charters and previous legislation relating to the roads that construction which they think proper, and also upon the laws they shall themselves from time to time ordain and establish, and the application of these laws to particular instances. That is the *judicial* function of government. The judicial power is vested by the Constitution in one Supreme Court and such inferior courts as Congress may from time to time ordain and establish.

Now, what is a *court* in the sense used by the Constitution? Simply the tribunals of common law and equity, which alone have ever existed *in this country or are* consistent with the spirit of free institutions. But *the rights of property* are protected by State constitutions and laws as

well as by those of the United States, and under none of them can a man, or even a railroad corporation, be dispossessed of property but by due process of law; a provision which is utterly ignored by this bill. This bill cannot make that *due process of law* which was not so before. The phrase has a determinate meaning, and is fixed in the fifth amendment to the Constitution as a two-edged flaming sword to cut down and consume all such pretended and vagabond courts as are created by this bill and shall be found prowling about the Eden of our liberties. No; the judicial power must act in conformity with the established forms of the Constitution and the laws. The exercise of this function in any other way is despotic force; and legal redress failing justifies resistance to the death. Just that thing this bill proposes that this commission shall do.

In passing from this subject I cite the following extracts, the pertinency of which will be apparent:

> The legislative power extends only to the making of laws, and in its exercise it is limited and restrained by the paramount authority of the Federal and State constitutions. It cannot directly reach the property or vested rights of the citizen by providing for their forfeiture or transfer to another *without trial and judgment* of the courts; for to do so would be the exercise of a power which belongs to another branch of the government, and is forbidden to the legislative. (*Newland* vs. *Marsh*, 19 Ill., 382.)

That is not legislation—

Far less is it a judicial act—

> which adjudicates in a particular case, prescribes the rule contrary to the general law, and orders it to be enforced. Such power assimilates itself more closely to despotic rule than any other attribute of the government. (*Ervine's Appeal*, 16 Penn St. Repts., 266.)

I believe the enactment of this bill into a law is properly characterized in the last citation.

Fourth. To control the transportation of a country is to control the country, and to fix its rates of transportation and prescribe the rules and regulations thereof is to control that transportation. To vest that control in any single body of men is to clothe them with more power than is possessed by any monarch to-day.

In our country, governed by popular elections, the existence of a small body of men with power to exact from all the railroads, being and to be west of the Mississippi River, conformity to its will in favor of one candidate or another is to organize a monopoly of political power compared with the evils of which all the abuses we have known would be works of purity and grace.

The board of commissioners might come finally to be the creatures of the executive, and in their turn re-elect their creator, or otherwise as might seem to them good. Or, more likely still, the corporations concerned, driven by such cruel and unusual legislation, might soon become the owners of the board itself, and thus entrenched behind a legal fortress of our own creation, they would perpetrate and increase all the grievances of which we have now reason to complain with absolute impunity under the sanctions of the commissioners themselves. Indeed, so alert is one of the great political parties, even now, to the dangers and advantages which are inseparable from the existence of this proposed commission as a source of dictation and plunder in elections, that there is here a manifest attempt to deprive the existing executive of his undoubted constitutional right of appointment, *coupled* with a provision which will enable any future executive to remove the board at will, and fashion its power and purposes to his own and his party's end.

Fifth. If this scheme should prove to be a thing of power, it would

inevitably develop all the evils which I have endeavored to suggest, with many more. On the other hand, if it should prove to be a mere sham and bauble, a tub thrown to the whale of transient popular feeling, like the granger laws of the West, then what would become of *the actual grievances* which exist in the use and operation of the Union Pacific Railroad and its branches? For these specific wrongs we were called upon to furnish an early remedy. They will simply continue and increase. We are blind men striking in the dark with a boomerang.

The fifteenth section of the law of 1864, the true construction, exposition, and application of which is admitted by all to be the only necessary thing, which might be obtained within one year from the Supreme Court, and at once thereafter enforced by irresistable sanctions, will still remain upon the statute-book unconstrued and unapplied. In our effort to introduce the general millennium by act of Congress and dangerous innovations, we shall have overlooked and perpetuated the evils which we might remedy by a sensible, practical measure at once.

The bill of the majority, borrowed from a monarchy and full of violations of the principles of civil liberty to which we are accustomed, is far worse than the law of Great Britain. That creates in practice hardly more than a board of brotherly advice. Whatever it is there, its creation and powers are derived from acts of an omnipotent Parliament, which can hang the Queen to-morrow and yet violate no law. But such a law as is *here* proposed is a monstrosity in a country like ours, and as dangerous in the citadel of our liberties as the wooden horse in Troy.

The fact, if it be a fact, that this sprout of monarchy has been set in the soil in Massachusetts, and has thus far flourished in the shadow of Bunker Hill, exists, if at all, by reason of the exceptional administrative purity thus far of the commissioners, and their care to avoid the exercise of the despotic power which they really possess; or because the people of that renowned and admirable commonwealth, in their eagerness to master the evils incident to the working of her railroad system, have overlooked the dangerous nature of this innovation upon our system of laws.

No doubt that an able and impartial board of commissioners, clothed with advisory and inspective powers, whose dignity, competency, and high character should lead the corporations and the public alike to repose confidence in their opinions, and to seek relief from expensive and tardy litigation by willing reference to them of difficulties requiring arbitration, might accomplish very great good to the country. Such are the useful functions really performed by the commissioners of Great Britain and Massachusetts. But this bill proposes no such tribunal.

The specific evil which we are called upon to redress is quite within the easy management of the common tribunals of this country. There has never yet been that earnest effort to secure action by the courts which characterizes ordinary litigation before a justice of the peace. With all the mouthing and clamor, it was admitted before the committee that the two corporations were about equally guilty; while the allegations of failure to comply with the requirements of government were confined to the single instance of the transportation of a regiment of troops, in which matter, however, it turned out that the Union Pacific offered to carry them as cheaply as its rival, nor was the regiment delayed perceptibly in its transportation to the seat of war.

Nothing is needed in this case but a little real effort to get a decision of the court, which no party has ever yet seriously tried to do. In the bill which is submitted herewith, provision is made for this purpose, and the Attorney-General of the United States is required to push the pro-

ceedings, and while securing all the rights of the corporations, to protect the people; who, notwithstanding all the extraordinary affection we feel for them, have hitherto been substantially overlooked in this controversy. On the contrary, the bill of the majority, in addition to postponing the remedy for years by the litigation which must arise from its novel provisions, proposes a measure, the principles of which fully carried out would create a holocaust of their civil liberties.

It is impossible here to review the report of the majority; but I wish to say that, in reaching these conclusions upon their bill, I do not by any means follow the course of argument attributed by them to the opponents of their measure. Nor am I careful to avoid the charges of "harshness and severity," which are suggested by the sanctions of the bill herewith submitted in the proposed forfeiture of charters and punishment of officers of corporations who willfully shall violate or neglect to obey the decisions of the regular courts when once obtained. I would give to corporations and their managers all the rights under the law which belong to the highest or the lowest citizen. I would ascertain those rights by due process of law through the usual operation of the judicial power, and *then* hold them to the severest accountability. No other course is consistent with our form of government or the harmony and prosperity of our country.

Earnestly hoping that the careful attention of every member of the House will be given to this extraordinary measure of the majority, and that its alarming features may be analyzed and exposed by abilities more adequate to the task than mine, I respectfully submit the foregoing observations and the accompanying bill.

HENRY W. BLAIR.

I concur with Mr. Blair in opposition to the bill of the majority.

GEORGE M. LANDERS.

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A BILL to facilitate the early judicial construction of the fifteenth section of the act of July second, eighteen hundred and sixty-four, entitled "An act to amend 'An act to aid in the construction of a railroad and telegraph-line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two."

Whereas controversies have arisen as to the true meaning and intent of the fifteenth section of the act of Congress approved on the second day of July, eighteen hundred and sixty-four, entitled "An act to amend 'An act to aid in the construction of a railroad and telegraph-line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two," and it is alleged that the Union Pacific Railroad and its branches have not complied with the requirements of the law as in such fifteenth section provided, but have violated the same, to the great injury of each other and of the public welfare; and

Whereas a suit in equity is now, or lately was, pending in the district court of the district of Nebraska, in which the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company are plaintiffs, and the Union Pacific Railroad Company is defendant, which suit is founded upon said fifteenth section, and its decision will require a full judicial construction and exposition of the law aforesaid, and will settle the rights, duties, and liabilities of all parties and of the public under the same; and

Whereas said suit has already been partially heard, but an order of dismissal has been entered by the plaintiffs because one of the judges has declined to decide the same for personal reasons, which order of dismissal the parties are desirous may be vacated, that the cause may proceed to final determination in the courts: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That said suit is hereby revived, and the Chief Justice of the Supreme Court shall forthwith designate a judge of the circuit court or of the Supreme Court before whom, with the judge of the district aforesaid, the said suit shall be heard, with right of appeal to the Supreme Court as in other cases; and it shall be the duty of both said courts to give said cause and all proceedings under this act precedence of all other business, so far as is practicable, with reference to a speedy and just decision.

SEC. 2. The Attorney-General, with the consent of the parties, if the court shall deem such assent necessary, shall be required to appear in said suit in behalf of the United States and of the public interests, and he shall raise for the consideration of the court all such questions of fact and of law touching the proper construction of the fifteenth section of the law aforesaid, and other provisions having relation to the same, as shall be material, so that the interests of the public as well as of said companies may be fully heard, and the true intent and meaning of the law may be judicially declared. And if either of said companies shall object to such joinder in action of the Attorney-General, and the court shall consider such objection a bar to such joinder, or if said suit shall be discontinued by the parties, or if, being discontinued, an order to vacate the dismissal and to reinstate the parties and proceedings shall be resisted by the parties and not entered by the court, and by reason thereof, or for any cause, the court loses jurisdiction of the suit aforesaid, then the Attorney-General shall proceed forthwith diligently to inquire whether there has been a violation of said fifteenth section, or failure to comply therewith, by any corporation, or person in the employ of any corporation; and if, in his judgment, there has been such failure or violation, or if hereafter, in his judgment, there shall be any such failure or violation, he shall cause a suit in equity to be instituted, in the name of the United States, against such corporation or person, in the proper circuit court, in which suit he shall charge such corporation or person with such violations of law as he shall have discovered, or which may be brought to his knowledge from any source, so far as the same shall be necessary in order to raise all material questions arising under the fifteenth section aforesaid, and to settle the true intent of the same. And in any decision under this act the court shall plainly specify the general rules and regulations arising under the fifteenth section aforesaid by and in accordance with which the Union Pacific Railroad and its branches shall be used and operated, and shall answer all such pertinent questions as shall be raised by any of the parties in such proceedings.

SEC. 3. Should any of said roads or branches, in their corporate capacity, after due notice of the final decision in any suit under this act, intentionally violate or neglect to obey the same, and the rules and regulations prescribed as aforesaid, or authorize the same to be done, such violation or neglect shall of itself constitute a forfeiture of the franchise of the corporation, so far as the same is subject to forfeiture, to the United States; and the proper circuit court, subject to appeal to the Supreme Court, upon application of the Attorney-General, in any proper form of remedy, or of any corporation or citizen of the United

States, and proof of such act of forfeiture, to be ascertained by due process of law, shall make an order transferring the possession, management, operation, and control of such defaulting road or branch into the hands of a receiver, to be appointed by the court, who shall, under the direction of the court, protect, control, and operate the same, and disburse and invest the earnings of such road or branch until action by Congress in the premises. And it shall be the duty of the court to cause the Attorney-General to be informed of the institution of any proceeding under this section, that he may appear and protect the interests of the public therein.

SEC. 4. Any person who shall have participated in an act of willful neglect or violation of the decision of the court, or of such rules and regulations as the court may prescribe under the fifteenth section of the act of eighteen hundred and sixty-four aforesaid, shall be subject to indictment therefor, and be punished by fine and imprisonment, or both, in the discretion of the court, and ever afterward shall be disqualified to hold any office or to fill any place of trust in such corporation.

SEC. 5. No proceeding under this act shall be a bar to suits for private damages or to any remedy now existing by law; and any form of legal remedy which now exists against the Union Pacific Railroad may likewise be used by itself or any other party against the Kansas and Pacific Railway Company and the Denver and Pacific Railway and Telegraph Company or any branches of the Union Pacific Railroad Company.

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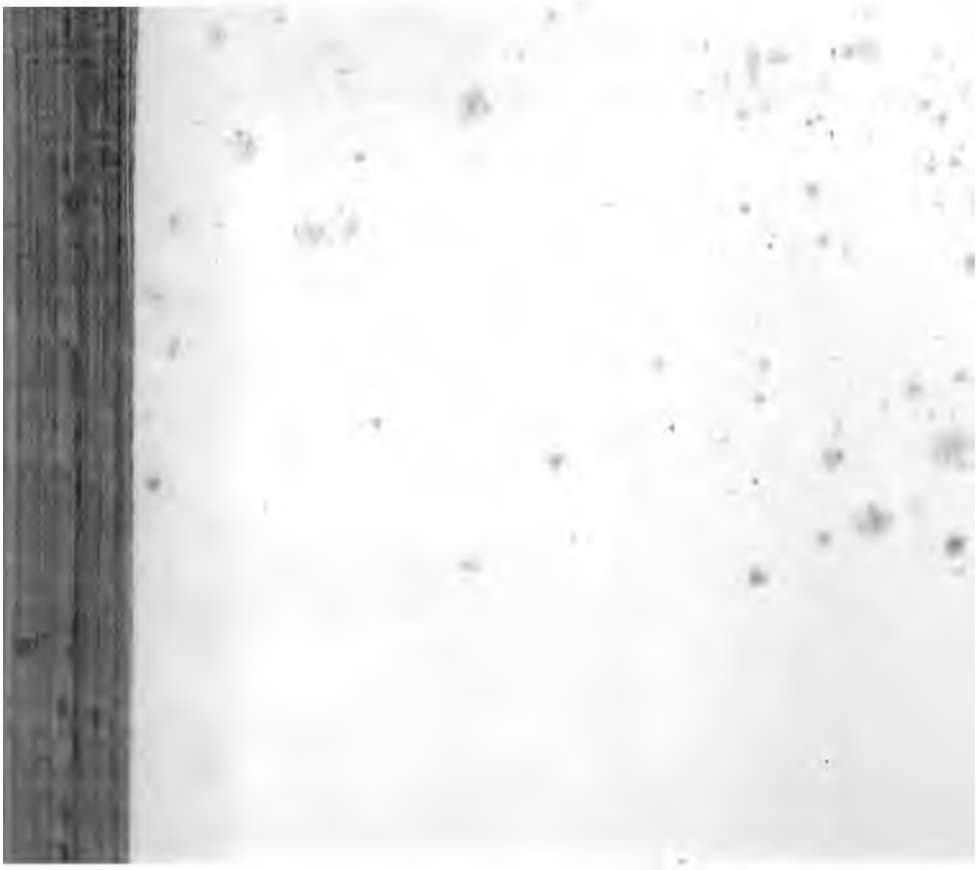
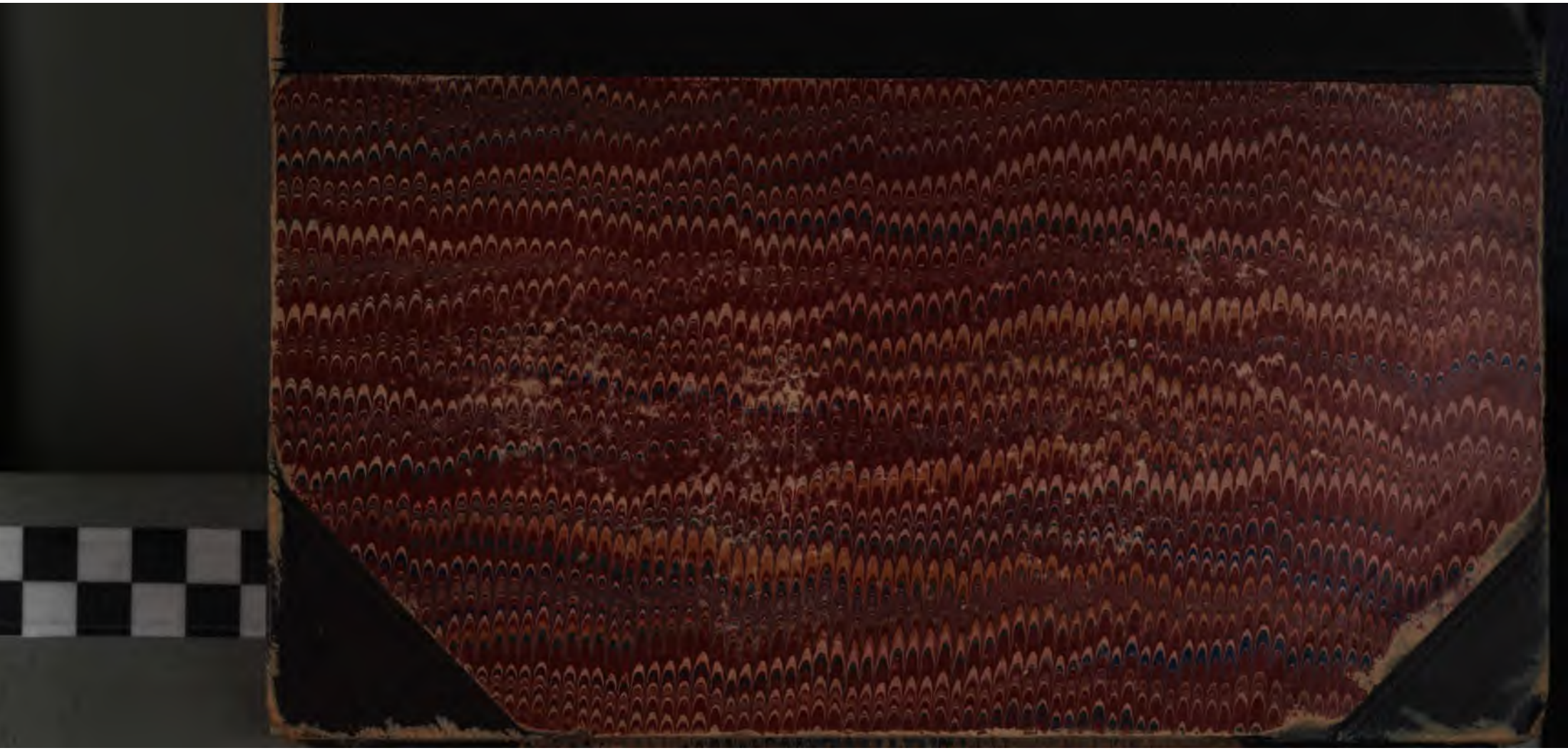
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